Supreme Court, U.S.
FILED

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No. _____

In The
Supreme Court of the United States

MID-CON FREIGHT SYSTEMS, INC.
AND LAFOND EXPRESS, INC., on behalf
of themselves and all others similarly situated,

Petitioners,

v.

MICHIGAN PUBLIC SERVICE COMMISSION,
MICHIGAN DEPARTMENT OF TREASURY,
MICHIGAN DEPARTMENT OF COMMERCE,
AND THE STATE OF MICHIGAN,

Respondents.

On Petition For A Writ Of Certiorari
To The Michigan Court Of Appeals

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED FOR REVIEW

May States avoid the $10 per-vehicle fee cap of the expressly preemptive Single State Registration System (and its predecessor "bingo card" program) by charging $100 per vehicle to certain interstate motor carriers and calling the charge a "regulatory fee?"

LIST OF PARTIES

Additional parties to the proceedings below were as follows: (a) As plaintiffs, Westlake Transportation, Inc.; Gerig's Trucking & Leasing, Inc.; Bestway Express, Inc.; Van Der Kooi Carriers, Inc.; Prism, Inc.; El Toro, Inc.; Myriah, Inc.; Troy Cab, Inc.; Deeco Services, Inc., d/b/a Deeco Transportation; Frank Tiberio, d/b/a Fairfield Towing; Dale Constine & Sons, Inc.; Calcut Sales & Services, Inc., d/b/a Calcut Trucking Company; Ambassador Transportation, Inc.; Hawkins Steel Cartage, Inc.; JLH Transfer, Inc.; H&H Enterprises, Inc., d/b/a S&M Cartage; Central Transport, Inc.; Bancroft Trucking Co.; U.S. Truck Co., Inc.; West End Cartage, Inc.; Central Cartage Co.; CTX, Inc.; Mohawk Motor of Michigan, Inc.; Economy Transport, Inc.; McKinlay Transport, Ltd.; Mason & Dixon Lines, Inc.; Universal Am-Can, Ltd.; Romeo Expeditors, Inc.; Tom Thumb Services, Inc., d/b/a Rei; O-Jay Transport Company; J. Law Enterprises, Inc.; and Alliance of O-Jay Transport, Inc.; (b) as intervening plaintiffs, The American Trucking Associations, Inc. and TNT Holland Motor Express, Inc.; and (c) as defendants, the Commissioners and Chairman of the Michigan Public Service Commission; the Treasurer of the State of Michigan; and the Director of the Michigan Department of Commerce.

RULE 29.6 STATEMENT

Petitioners, Mid-Con Freight Systems, Inc. and Lafond Express, Inc. f/k/a Elex, Inc.,[1] have no parent companies and are not owned in any respect by any publicly-held entity.

[1] Prior to changing its corporate name, Lafond Express, Inc. appeared as "Elex, Inc." in the proceedings below.

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PETITION FOR A WRIT OF CERTIORARI

Petitioners, Mid-Con Freight Systems, Inc. and Lafond Express, Inc., respectfully petition for a writ of certiorari to review a judgment of the Michigan Court of Appeals.

OPINIONS BELOW

The opinion of the Michigan Court of Appeals (App. 1-35) is reported as *Westlake Transportation, Inc. v. Michigan Public Service Comm'n*, 255 Mich.App. 589, 662 N.W.2d 784 (2003). The trial court rulings (App. 36-72) and the judgment of the Michigan Supreme Court denying leave to appeal (App. 73-75) are all unreported.

JURISDICTION

The Michigan Court of Appeals decision was entered March 11, 2003. The judgment of the Michigan Supreme Court denying Petitioners' timely application for leave to appeal was entered December 3, 2003. The jurisdiction of this Court is invoked under 28 U.S.C. § 1257 (2000 ed.).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Supremacy and Commerce Clauses of the United States Constitution, Art. VI, cl. 2 and Art. I, § 8, cl. 3, provide in relevant part as follows:

> This Constitution, and the Laws of the United States which shall be made in Pursuance thereof

> . . . shall be the supreme Law of the Land; and the judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.
>
> * * *
>
> The Congress shall have Power . . . [t]o regulate Commerce . . . among the several States. . . .

Relevant statutory provisions reproduced in the Appendix are 49 U.S.C. § 11506 (1988 ed.) (repealed) (App. 76-77); 49 U.S.C. § 11506 (1994 ed.) (repealed) (App. 78-81); 49 U.S.C. § 14504 (2000 ed.) (App. 82-85); and Mich. Comp. Laws Ann. § 478.2 (West 2002) (App. 86-88).

STATEMENT OF THE CASE

The decision below disrupts the comprehensive federal regulatory plan of the Single State Registration System ("SSRS") and slights Congress's plenary authority to regulate interstate commerce. For over thirty-five years, Congress has imposed an explicit preemptive limitation upon the per-truck identification fees levied against interstate motor carriers registering their operations with State regulatory commissions and has expressly declared fees in excess of the amount authorized to be a burden upon interstate commerce. Nevertheless, the court below held that the Michigan Public Service Commission ("PSC") may exceed the federal fee cap by tenfold and evade preemption by calling its levy a "regulatory fee." That decision is plainly inimical to the SSRS, irreconcilable with other precedent, and important to interstate trucking operations throughout the country. The Michigan Court of Appeals ruling, therefore, warrants review.

1. As recently discussed in *Yellow Transportation, Inc. v. Michigan*, 537 U.S. 36 (2002), the 1991 enactment of the Intermodal Surface Transportation Efficiency Act ("ISTEA") amended longstanding federal law to create a new uniform system known as the SSRS under which State regulatory commissions may register interstate motor carriers before authorizing their vehicles to cross into State territory. As it concerns the fees that may be charged in connection with such limited State regulation of interstate trucking, however, the SSRS is little different from its statutory predecessor. Controlling federal law has long preempted flat, per-vehicle registration and identification fees in excess of $10.

In 1965, Congress exercised its authority under the Commerce Clause and directed the Interstate Commerce Commission ("ICC") to adopt standards under which States might require motor carriers to prove the lawfulness of their interstate operations. Congress's purpose was to protect legitimate carriers from the "not only illegal but also manifestly unfair" competition of unauthorized truckers and to establish "uniformity of registration" because "registration requirements differ[ed] widely among the States" and could "impose undue burdens on carriers." H.R. Rep. No. 89-253 (1965), *reprinted in* 1965 U.S.C.C.A.N. 2923, 2924-2925, 2929. The proposed regulatory standards would permit the States to (1) require evidence of the carriers' ICC operating authority; (2) compel the filing of proof of insurance; (3) demand the designation of service of process agents; and (4) register and identify motor vehicles operating under the carriers' ICC authority. 49 U.S.C. § 11506(a) (1988 ed.). Congress made its intent plain as to the preemptive effect of the new standards by expressly stating as follows:

> When a State registration requirement imposes obligations in excess of the standards, the part in excess is an unreasonable burden [on interstate transportation].

49 U.S.C. § 11506(b) (1988 ed.).

Pursuant to Congress's directive, the ICC adopted regulations permitting State regulatory commissions to register and identify interstate motor carrier vehicles for a fee assessed on a per-vehicle basis. As proof of registration and identification, each State participating in the program issued what were known as "bingo stamps" for each vehicle, and the stamps were placed on vehicle-specific "bingo cards." *See Yellow Transportation*, 537 U.S. at 39; *National Ass'n of Regulatory Utility Comm'rs v. Interstate Commerce Comm'n*, 41 F.3d 721, 724 (D.C. Cir. 1994). During all years relevant to this case, the applicable ICC regulation has always imposed a fee cap of $10 for each vehicle registered and each identification stamp issued. *See* 49 C.F.R. § 1023.33 (1991). Indeed, an historical review of the regulation from 1982 forward reveals that it remained unchanged until 1992 when the ICC began rulemaking proceedings to implement the SSRS.

In 1991, the ISTEA dismantled the "bingo card" system and directed the ICC to amend its registration standards. Under the new SSRS program, each interstate motor carrier is now required to register annually with only a "base" State that collects and distributes fees for all other States participating in the program through which the carrier operates. Like the "bingo card" system, the SSRS permits the registration of interstate operating authority, the filing of proof of insurance, and the designation of local agents. Most importantly, however, the SSRS eliminated vehicle-specific registration and identification

by State regulatory commissions and "capped the per-vehicle registration fee that participating States could charge interstate motor carriers." *Yellow Transportation*, 537 U.S. at 40. Specifically, Congress expressly adopted the ICC's $10 per-vehicle fee cap when it designed the SSRS to include

> *a fee system . . . that* (I) will be based on the number of commercial motor vehicles the carrier operates in a State and on the number of States in which the carrier operates, (II) will minimize the costs of complying with the registration system, and (III) *will result in a fee for each participating State that is equal to the fee, not to exceed $10 per vehicle, that such State collected or charged as of November 15, 1991. . . .*

49 U.S.C. § 11506(c)(2)(B)(iv) (1994 ed.) (emphasis supplied).[2]

2. Michigan is a longstanding participant in the SSRS and the predecessor "bingo card" program. During all times relevant to this action, the Michigan Motor Carrier Act, at Mich. Comp. Laws Ann. § 478.7(1) (West 2002), has prohibited motor carriers from engaging in the interstate transportation of property in Michigan "without first having registered with the [PSC] and paid the required registration and vehicle fees." As recounted in

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[2] Effective January 1, 1996, 49 U.S.C. § 11506 (1994 ed.) was repealed and recodified at 49 U.S.C. § 14504 (2000 ed.). Both statutes expressly provide that "[t]he charging or collection of *any* fee under this section that is not in accordance with the fee system established under subparagraph (B)(iv) of this paragraph shall be deemed to be a burden on interstate commerce." 49 U.S.C. § 11506(c)(2)(C) (1994 ed.) (emphasis supplied); 49 U.S.C. § 14504(c)(2)(C) (2000 ed.) (emphasis supplied).

Yellow Transportation, reciprocity agreements with other States might call for a lesser charge, but the statutory maximum fee levied for each registering interstate carrier is $10 per truck, per year. Mich. Comp. Laws Ann. § 478.7(4) (West 2002). Curiously, however, for registering interstate carriers that also purchase vehicle license plates in Michigan, the PSC "waives" the federally-compliant $10 fee and substitutes in its stead a *$100* fee imposed by Mich. Comp. Laws Ann. § 478.2(2) (West 2002) on "each vehicle operated by the motor carrier which is registered in this state and operating entirely in interstate commerce."[3] The $100 fee – payment of which also requires the carrier to identify its trucks by make, model, and serial number and to obtain an identifying decal for each – is referred to as the "Interstate Decal Fee."

Whether an interstate carrier pays $10 or $100 per truck, the PSC has always required of all carriers the same federally-authorized information (evidence of federal operating authority, proof of insurance, and name of service of process agent) under the SSRS and its predecessor "bingo card" program. When the $10 fee is collected, it

[3] Michigan Comp. Laws Ann. § 478.2(2) is not a model of clarity in its ambiguous reference to "each vehicle . . . registered in this state" given that interstate motor carriers also "register" their operations under the SSRS. There is no dispute, however, that it is the interstate motor carrier operating Michigan-plated trucks that is assessed the $100 fee. In addition, although Mich. Comp. Laws Ann. § 478.7(4) does not exempt any interstate truck from the federally-authorized $10 fee, the PSC has consistently represented that it "waives" the $10 fee when it charges carriers the $100 fee for Michigan-plated trucks. *See* App. 16 n.6 (citing *Schneider Nat'l Carriers, Inc. v. State*, 247 Mich.App. 716, 721, 637 N.W.2d 838, 840 (2001), *vacated on other grounds*, ___ Mich. ___, 659 N.W.2d 228 (2003)).

is generally "placed to the credit of the [PSC]," and a designated portion of the revenue generated must be deposited in the Michigan Truck Safety Fund. Mich. Comp. Laws Ann. § 478.6; § 478.7(5) (West 2002). The $100 Interstate Decal Fee is not statutorily directed to any particular purpose. Rather, like all PSC fees imposed upon *intrastate*-operated motor carrier vehicles, the Interstate Decal Fee is "placed to the credit of the [PSC]," and may be appropriated "to the [PSC] and the motor vehicle highway fund in such proportions as the legislature may determine." Mich. Comp. Laws Ann. § 478.6. According to the PSC, the Interstate Decal Fee, together with all fees collected from *intrastate* carriers, supports "enforcement of the Motor Carrier Act, Motor Carrier Safety Act, Michigan Vehicle Code, size and weight regulation, and other laws governing commercial motor vehicles and motor carriers."[4]

3. Petitioners brought suit in the Michigan Court of Claims on behalf of all carriers subject to the Interstate Decal Fee and were certified as class representatives authorized to prosecute the action on behalf of similarly-situated class members.[5] Petitioners argued that the Interstate Decal Fee, to the extent it exceeds $10 per vehicle, is preempted by the SSRS. App. 38. In addition, because class members filed suit on January 3, 1995 and

[4] *Affidavit of Thomas R. Lonergan*, ¶¶ 15-16 presented to the Court of Claims and Court of Appeals.

[5] The lower court proceedings involved two consolidated cases that presented a combined challenge to both the Interstate Decal Fee and a separate $100 decal fee imposed by Michigan on intrastate-operated motor carrier vehicles. App. 37. The challenge to the intrastate fee was based upon separate legal grounds and is not the subject of this Petition.

claimed refund rights under a three-year statute of limitations, Petitioners similarly maintained that Interstate Decal Fees exceeding $10 per vehicle were preempted by the federal "bingo card" program in effect before the January 1, 1994 implementation of the SSRS. App. 18; 68. The State responded that federal preemption principles were inapplicable because the Interstate Decal Fee was assessed in connection with the plating of interstate motor vehicles and allegedly had no relationship to SSRS or "bingo card" registration.

The Court of Claims ruled that the Interstate Decal Fee was not preempted. The court initially overlooked the aspect of Petitioners' claim pre-dating January 1, 1994 and addressed the SSRS first. It decided that the SSRS did not preempt the Interstate Decal Fee because the federal $10 per-vehicle fee cap applied to "participating states," but not the "registering state." App. 46. On motion for reconsideration, when reminded of the pre-SSRS portion of Petitioners' complaint, the Court of Claims also ruled against preemption under the predecessor "bingo card" program based on the same theory that the $10 fee cap imposed by the ICC did not apply to the "state of registration." App. 70. It was never clear whether the court's use of the terms "registration state" and "state of registration" was a reference to registration under the SSRS and "bingo card" programs or to vehicle "registration" involving the purchase of license plates.

4. Petitioners appealed, and the Michigan Court of Appeals affirmed the Court of Claims ruling on separate grounds. Finding that the statutory language and accompanying federal regulations were clear, the Court of Appeals ruled that the "registration state is simply a participating state in which a motor carrier is registering."

App. 15. Therefore, reasoned the Court of Appeals, "when the statute states that a participating state may not charge a fee in excess of $10, this includes the registration state." *Id.* Nevertheless, applying what it characterized as a "general presumption ... against federal preemption," App. 6, the Court of Appeals accepted the State's new argument that the Interstate Decal Fee is not and has never been preempted because it is a "regulatory fee."

Addressing the SSRS first, the Court of Appeals found that the Interstate Decal Fee "could reasonably be classified as a regulatory fee because it is a fee imposed for the administration of the [Michigan Motor Carrier Act], particularly covering costs of enforcing safety regulations." App. 16. The Court of Appeals then concluded that, "[b]ecause the fee ... is not a registration fee, it is not subject to preemption by 49 USC 11506." App. 16-17. Based upon the reasoning that "pre-1994 federal regulation substantially mirrored" the SSRS, the Court of Appeals also ruled that the Interstate Decal Fee, as a "regulatory fee," was similarly "outside the scope of the federal law and was not preempted" under the "bingo card" program. App. 19. The Michigan Supreme Court denied further review after timely application by Petitioners. App. 75.

REASONS FOR GRANTING THE WRIT

This case presents a compelling issue important to the federal regulation of interstate truck transportation and Congressional authority to preempt conflicting state laws. Just last term in *Yellow Transportation*, this Court reversed the Michigan Supreme Court in another SSRS case

and confirmed that Congress "capped the per-vehicle registration fee that participating States could charge interstate motor carriers." 537 U.S. at 40. The decision below, however, permits Michigan and other States to evade Congress's express preemptive mandate by conveniently characterizing higher-than-authorized per-truck identification fees as "regulatory" in nature. That decision cannot be reconciled with controlling federal law, the rulings of other State courts of last resort, or the message and purpose of Congress's action. In addition, the legal issue presented is of great significance to the trucking industry, to proper administration of the SSRS, and to interstate commerce.[6] Review of the decision below is therefore required.

A. The Lower Court Disregarded The Preemptive Force Of Controlling Federal Law, In Direct Conflict With Extensive Federal Court Precedent

The Michigan Court of Appeals decision reveals a fundamental misreading of the law of interstate trucking and federal preemption of interfering State laws. Whereas the Michigan court's starting point was a "presumption . . . against preemption" (App. 6; 18 n.7), this Court has ruled unambiguously that there exists no presumption against preemption when the matter at hand is "inherently federal in character" or when "the State regulates in an area where there has been a history of significant federal presence." *Buckman Co. v. Plaintiffs' Legal Committee*, 531

[6] For this reason, Petitioners urge the Court – just as it did in *Yellow Transportation* – to invite the Solicitor General to file a brief in this case expressing the views of the United States.

U.S. 341, 347-348 (2001); *United States v. Locke*, 529 U.S. 89, 108 (2000). This case presents just such a setting. The SSRS finds its roots in the Interstate Commerce Act, which is "among the most pervasive and comprehensive of federal regulatory schemes. . . . " *Chicago & North Western Transportation Co. v. Kalo Brick & Tile Co.*, 450 U.S. 311, 318 (1981). Consequently, no presumption against preemption is at issue here, and the Michigan court's ruling thus conflicts directly with a long history of decisions in which the federal regulation of interstate commerce has been deemed paramount in its nullification of conflicting State law.

"Since the turn of the [twentieth] century," this Court has "frequently invalidated attempts by the States to impose on common carriers obligations that are plainly inconsistent with the plenary authority of the Interstate Commerce Commission or with Congressional policy as reflected in the [Interstate Commerce] Act." *Id.* Thus, what is at issue in this case is Congress's power to regulate and protect "the instrumentalities of [and] activities that substantially affect interstate commerce," *United States v. Lopez*, 514 U.S. 549, 558-559 (1995), as expressed by the explicit SSRS command that "[t]he charging or collection of *any* fee" in excess of the $10 per-vehicle fee cap "shall be deemed to be a burden on interstate commerce." 49 U.S.C. § 14504(c)(2)(C) (2000 ed.) (emphasis supplied). Related applications of that power, as applied to interstate trucking, have been jealously guarded by this Court and others on occasions too numerous to tally in settings too varied to catalogue. Historically, for example, it has been held that federal motor carrier law supersedes State law on the subject of an interstate trucker's bill of lading liability for cargo damage, *Adams Express Co. v.*

Croninger, 226 U.S. 491 (1913), prohibited a State from revoking an interstate motor carrier's right to use state roads as punishment for violations of highway regulations, *Castle v. Hayes Freight Lines, Inc.*, 348 U.S. 61 (1954), requires States to defer to federal authority for the interpretation of a motor carrier's interstate operating rights, *Service Storage & Transfer Co. v. Commonwealth*, 359 U.S. 171 (1959), and preempted laws purporting to require State approval for the transfer of an interstate motor carrier's stock or operating authority. *Leaseway Transportation Corp. v. Bushnell*, 888 F.2d 1212 (7th Cir. 1989). Most recently, Congress expansively declared that even "the regulation of intrastate transportation of property by the States has . . . imposed an unreasonable burden on interstate commerce," Pub. L. No. 103-305, 108 Stat. 1605 (1994), and its action was upheld when it severely restricted State regulation of intrastate trucking by broadly preempting all State laws "related to a price, route, or service of any motor carrier . . . with respect to the transportation of property." 49 U.S.C. § 14501(c)(1) (2000 ed.). *See Kelley v. United States*, 69 F.3d 1503 (10th Cir. 1995), *cert. denied*, 517 U.S. 1166 (1996) (upholding 49 U.S.C. § 14501(c)(1)).[7]

In short, it is "well settled that there can be no divided authority over interstate commerce, and that the acts of Congress on that subject are supreme and exclusive."

[7] *See also City of Columbus v. Ours Garage & Wrecker Service, Inc.*, 536 U.S. 424, 430 (2002) (applying an "assumption that the historic police powers of the States were not to be superseded," but in the interpretation of an express statutory safety-related exception to the preemption provisions of 49 U.S.C. § 14501) (2000 ed.) (quoting *Wisconsin Public Intervenor v. Mortier*, 501 U.S. 597, 605 (1991)).

Missouri Pacific R.R. v. Stroud, 267 U.S. 404, 408 (1925). With specific reference to this case, the SSRS and its predecessor "bingo card" program evidence a conspicuous exercise of that authority over State regulatory commission registration and identification of motor carrier vehicles moving in interstate commerce. When Congress first addressed the subject, it made plain that State registration requirements in excess of the ICC's standards were "an unreasonable burden on [interstate transportation]," 49 U.S.C. § 11506(b) (1988 ed.), and the resulting ICC standards imposing the $10 fee cap had no less preemptive effect than the federal statute under which they were adopted. *Fidelity Federal Savings & Loan Ass'n v. de la Cuestra*, 458 U.S. 141, 153 (1982). But if there were ever any question as to Congress's intentions, all doubt evaporated with implementation of the SSRS, the adoption of the $10 per-vehicle fee cap, and Congress's proclamation that "[t]he charging or collection of *any* fee under this section that is not in accordance with the fee system established [herein] shall be deemed to be a burden on interstate commerce." 49 U.S.C. § 11506(c)(2)(C) (1994 ed.) (emphasis supplied).

Notwithstanding a hundred years of preemptive federal regulation over interstate trucking and the express directive of the SSRS legislation, the Michigan Court of Appeals upheld the Interstate Decal Fee by finding it to be a so-called "regulatory fee" falling outside the preemptive scope of both the SSRS and its statutory and regulatory predecessors. That rationale is fatally flawed for several apparent reasons.

First, the Michigan Court of Appeals disregarded Congress's obvious intent. Nothing in Congress's mandate authorizes State regulatory commissions to charge a per-vehicle identification fee in excess of $10, and nothing in

the SSRS regulations or in the legislative history of the ISTEA suggests that anything more than $10 per vehicle is authorized. *See* 49 C.F.R. § 367.4 (2002).[8] To the contrary, Congress expressed concern over industry estimates that the "bingo card" program was costing carriers "up to $250 million per year," and it thus sought "to benefit the interstate carriers by eliminating unnecessary compliance burdens" in the hope that consumers too would profit from resulting cost savings. H.R. Conf. Rep. No. 102-404 (1991), *reprinted in* 1991 U.S.C.C.A.N. 1679, 1817. In other words, it was Congress's goal to establish "a fee system . . . that [would] minimize the costs of complying with the registration system," 49 U.S.C. § 11506(c)(2)(B)(iv)(II) (1994 ed.), which conflicts directly with any notion that States are free to increase carrier costs by tacking on additional fee expense (in this case, an additional $90) over and above $10 per vehicle.

Second, the Court of Appeals erroneously dismissed the impact of regulatory amendments under which the ICC long ago revoked all authority for additional per-vehicle

[8] In 1995, the ICC was abolished by the ICC Termination Act of 1995. The Federal Highway Administration thereafter adopted the ICC regulations that implemented the SSRS and transferred those regulations to 49 C.F.R. § 367.1 *et seq.* (1997). The regulations remain the same to this day, echoing Congress's declaration that "[t]he charging or collection of *any* fee that is not in accordance with the fee system established above is deemed a burden on interstate commerce" and providing that, "[t]o the extent *any* state registration requirement imposes obligations in excess of those specified in this part, the requirement is an unreasonable burden on transportation. . . . " 49 C.F.R. § 367.4(g); (h) (2002) (emphasis supplied). The Federal Motor Carrier Safety Administration is now the agency with regulatory authority over the SSRS. 49 U.S.C. § 113(f)(1) (2000 ed.).

"regulatory fees" imposed in connection with State registration and identification of interstate motor vehicles. *See* App. 17. Prior to 1982, ICC regulations prescribed a maximum fee of $5 for a "bingo stamp" and also authorized an additional fee in a "reasonable amount" to be used by State regulatory commissions "solely for defraying the cost of the regulation of carriers by highway operating within the borders of such State and the enforcement of laws pertaining thereto." 49 C.F.R. § 1023.33 (1981). However, the ICC amended its regulation in 1982 to "prescribe a maximum fee of $10," 47 Fed. Reg. 8365 (1982), expunging *all* reference to additional "regulatory" fees. 49 C.F.R. § 1023.33 (1982). The lower court therefore wrongly disregarded the maxim of *expressio unius est exclusio alterius* – the express mention of one thing implies the exclusion of other things[9] – and its corollary conclusion that after 1982 the ICC intended to eliminate all per-vehicle "regulatory fees" over and above $10.

Third, the Court of Appeals mistakenly decided that additional fees are not preempted because they are not expressly prohibited. *See* App. 18 n.7. Conflicting State laws that prevent or frustrate the accomplishment of a federal objective have long been preempted under Supremacy Clause jurisprudence, and this Court "has never before required a specific, formal agency statement identifying conflict in order to conclude that such a conflict in fact exists." *Geier v. American Honda Motor Co.*, 529 U.S. 861, 873, 884 (2000). In any event, both Congress and the ICC were express, not silent, in their preemptive admonition

[9] 2A N. Singer, Statutes and Statutory Construction § 47:23 (6th ed. 2000 rev.).

that the "collection of any fee under this section that is not in accordance with the fee system established [herein] shall be deemed to be a burden on interstate commerce." 49 U.S.C. § 14504(c)(2)(C). *See also* 49 C.F.R. § 367.4(g) (2002) (prohibiting the "charging or collection of any fee that is not in accordance with the fee system established above").[10]

Finally (and most commonsensically), the regulatory fee/registration fee theory adopted by the Court of Appeals poses a distinction with only one real difference – a difference of $90. The $100 Interstate Decal Fee is just as much a "registration fee" as the $10 SSRS fee because the Interstate Decal Fee is assessed in exchange for an identification device – a decal that is affixed to a vehicle the interstate carrier must *register* with the PSC by make, model, and serial number. Predictably, therefore, the Court of Appeals' reasoning is impeached by its own reference to the Interstate Decal Fee as a "registration fee," rather than a regulatory fee, in an opinion issued less than eighteen months before the decision in this case. *Schneider Nat'l*, 247 Mich.App. at 721, 637 N.W.2d at 840.

[10] In light of such express Congressional and regulatory intent, the Court of Appeals' citation to 49 C.F.R. § 1023.104 (1991) cannot support its decision. *See* App. 17. That regulation, which stated that the ICC's standards should not be construed "to affect the collection or method of collection of taxes or fees by a State from motor carriers for the operation of vehicles within the borders of such State," was not adopted with the 1993 amendments creating the SSRS regulations and is not current law. In addition, the regulation can only be "squared" with the ICC's longstanding $10 fee cap if it is interpreted as authorizing something *other than* per-vehicle identification fees specific to interstate motor carriers, such as income, fuel, and property taxes or the plating fees that every motor vehicle operator must pay.

By the same token, the SSRS fee is just as much a "regulatory fee" as the Interstate Decal Fee because *both* are unquestionably put to *some* "regulatory" purpose when they are "placed to the credit of the [PSC]" under Mich. Comp. Laws Ann. § 478.6 and a designated portion of the $10 SSRS fee is deposited in the Michigan Truck Safety Fund pursuant to Mich. Comp. Laws Ann. § 478.7(5). Therefore, notwithstanding its assessment through single-state "registration," it is not surprising that the SSRS fee was twice called a "regulatory fee" by a PSC representative on the record in *Yellow Transportation*, No. 01-270, 2002 W.L. 32102975, *5a-6a (U.S. Apr. 5, 2002) (Joint Appendix, Affidavit of Thomas R. Lonergan).

Accordingly, the "regulatory fee" justification is a too-convenient, too-superficial defense against the Interstate Decal Fee's preemption. When State regulatory commissions like the PSC require interstate carriers to *register* their operations, the $10 SSRS fee is *the* per-vehicle "regulatory fee" authorized by Congress's preemptive act.[11] The Michigan Court of Appeals decision to the contrary is not only violative of federal preemption principles, but also plainly incorrect.

[11] In this regard, the Court of Appeals' citation to 49 C.F.R. § 1023.105 (1991) (*see* App. 17) actually supports Petitioners' argument that the $10 per-vehicle fee was intended to be the sole means of collecting a "regulatory fee" because the regulation urged States to use the $10 fee "for the purpose of defraying the cost of regulation."

B. The Michigan Decision Also Conflicts With State Court Precedent

State court precedent on the subject of this case was too casually dismissed by the Michigan Court of Appeals. That precedent, although handed down under the old "bingo card" system, carries just as much if not more weight today in light of Congress's adoption of the $10 fee cap in creating the SSRS.

The first two reported cases arose in Montana. *State ex rel. Sammons Trucking, Inc. v. Boedecker*, 158 Mont. 397, 492 P.2d 919 (1972) addressed ICC regulations that, at the time, permitted a $5 maximum fee for the registration and identification of interstate vehicles. The Montana court struck down a $10 fee, ruling that "Congress has preempted the field of state regulation and identification of interstate motor vehicles using Montana highways." *Id.* at 400, 492 P.2d at 920. Similarly, in *State ex rel. Sammons Trucking, Inc. v. Bollinger*, 169 Mont. 88, 544 P.2d 1235 (1976), the court nullified the State's attempt to charge $5 each for the motorized unit and the trailer in a tractor-trailer combination. The court again expressed no hesitation in finding that the ICC regulations were "controlling as to the registration and identification of motor vehicles engaged in interstate commerce" and,

> to the extent that Montana statutes impose greater conflicting requirements, they constitute an undue burden on interstate commerce and must yield to federal authority.

Id. at 92, 544 P.2d at 1236. *See also Owner-Operator Independent Driver Ass'n v. Idaho Public Utilities Comm'n*, 125 Idaho 401, 871 P.2d 818 (1994) (affording

preemptive effect to a $10 fee authorized for state registration and renewal of ICC operating authority).

Then there is the Illinois case of *Roadway Express, Inc. v. Treasurer*, 120 Ill.App.3d 133, 458 N.E.2d 66 (1983). The issue addressed in *Roadway* was whether Illinois law complied with the pre-1982 ICC regulations that permitted a $5 per-vehicle fee, but also authorized States to charge additional "regulatory fees" in order to defray the costs of regulation. The additional amount charged by Illinois was not used for such a specific "regulatory" purpose, and the court therefore ordered refunds of all fees paid in excess of $5 per vehicle. In so doing, the court also acknowledged that no additional "regulatory fee" would be permissible after 1981 because the ICC's amended regulation in 1982 "set an absolute limit of $10 on identification stamp fees" for all future operations. *Id.* at 135, 455 N.E.2d at 69.

The Michigan Court of Appeals summarily dismissed these prior case law holdings based upon its attempted regulatory/registration fee distinction. *See* App. 19 n.8. Again, however, the $100 Interstate Decal Fee is just as much a "registration fee" as the fees struck down in Montana and Illinois because the PSC requires the annual filing of specific vehicle-identifying information in connection with each fee payment. If in modern-day jurisprudence such a practice is not "registration," then it is time to resurrect turn-of-the-last-century common sense and heed Justice Brewer's advice that "we must regard things rather than names." *Fairbank v. United States*, 181 U.S. 283, 304 (1901). Whatever "regulatory" purpose Interstate Decal Fee revenue may later serve, the fee is collected in the first instance in connection with a State regulatory commission's registration and identification of interstate

motor vehicles, which the Montana and Illinois courts rightly concluded is a subject preempted by federal law.

C. The Issue Presented Here Is Important To Federal/State Relations And To Interstate Carriers Caught In The Middle

As shown earlier, the Michigan Court of Appeals approached this case with an ill-conceived "presumption against federal preemption" that appears to have colored its views on the important federal-state conflict at issue. As a result, the decision below fails to give appropriate deference to Congress's Commerce and Supremacy Clause powers and creates a proverbial loophole through which States may escape time-honored federal authority and cause real harm to interstate motor carrier operations. That loophole should be closed by this Court for several important reasons.

First, the Michigan "regulatory fee" approach, if adopted by other States, poses a significant threat to Congress's goal of reducing the regulatory burdens imposed upon interstate motor carriers. From the very beginning, Congress sought to afford interstate carriers "relief from [a] multiplicity of different State registration requirements" when it implemented the "bingo card" program in 1965. H.R. Rep. No. 89-253 (1965), *reprinted in* 1965 U.S.C.C.A.N. 2923, 2929. In so doing, Congress hoped to make registration requirements imposed by State regulatory commissions uniform. *Id.* Then, in 1991, the SSRS was designed as a more "streamlined administrative process" so as to reduce inefficiencies, eliminate unnecessary compliance burdens, and lessen carriers' costs. H.R. Conf. Rep. No. 102-404 (1991), *reprinted in* 1991 U.S.C.C.A.N. 1679, 1817. The decision below undermines each one of those goals by

signaling every State regulatory commission to add to its $10 SSRS fee any "regulatory fee" amount it chooses, which would subject interstate carriers to a quagmire of fees varying from State to State and make compliance more burdensome, less efficient, and certainly more costly.

Second, a so-called "regulatory fee exception" to the SSRS is little more than wordplay, as illustrated by the case before this Court. Nothing in Mich. Comp. Laws Ann. § 478.2(2) suggests any particular or special "regulatory" purpose to its assessment of the Interstate Decal Fee.[12] Rather, the most that can be said is that the Interstate Decal Fee, along with all PSC fees imposed on *intrastate* carriers, is "placed to the credit of the [PSC]" and may be appropriated "to the [PSC] and the motor vehicle highway fund in such proportions as the legislature may determine." Mich. Comp. Laws Ann. § 478.6. As a result, the Court of Appeals appears to have based its "regulatory fee" catch phrase on the broad statement of a PSC employee that the Interstate Decal Fee supports a whole host of laws governing commercial motor vehicles and carriers, which is the exact same "55 gallon drum" into which the

[12] It is this fact that distinguishes *Franks & Son, Inc. v. State*, 136 Wash.2d 737, 966 P.2d 1232 (1998), *cert. denied*, 526 U.S. 1066 (1999), a case cited by the Court of Appeals. *See* App. 16. In addressing an issue not raised in the later petition for certiorari, the court in that case incorrectly ruled that additional regulatory fees over and above the $10 SSRS fee are not preempted. But that decision was at least supported by an express and detailed statutory scheme evidencing an intent to impose a "regulatory fee" designed to "reasonably approximate the cost of supervising and regulating motor carriers." Also, the fee was the State's "sole source of funding for [its] motor carrier safety enforcement program." *Id.* at 1234-1235. As shown above, no such support exists for the Michigan Court of Appeals decision in this case.

PSC places a $100 decal fee imposed upon *intrastate*-operated vehicles.[13] That the Interstate Decal Fee is allegedly used to "regulate" interstate carriers in the *exact* same way intrastate vehicle fees are used to regulate Michigan intrastate carriers demonstrates the sophistry in the "regulatory fee" justification. "State regulation of interstate motor carriers exists as a matter of congressional grace," *National Ass'n of Regulatory Utility Comm'rs*, 41 F.3d at 723, which means the PSC simply cannot "regulate" interstate and intrastate carriers in an identical fashion.

Moreover, because any fee can be put to *some* later regulatory use, the opinion below invites each of the 39 SSRS States to increase its $10 fee by any amount it can expediently call "regulatory" in purpose. Interstate truckers, no longer protected by the $10 fee cap, will then be at the mercy of revenue-seeking State legislators with every incentive to decide that $10 or even $100 per vehicle is not enough for their "regulatory" needs. And because the Michigan court's ruling does not in any way limit the "regulatory fee" justification to trucks plated within the State, other jurisdictions may more expansively apply their fees to all interstate vehicles operated by any SSRS-registering carrier. The decision below thus sends a message that, if $100 for Michigan-plated trucks is permissible in Michigan, then $500 or $1,000 for every truck crossing

[13] *Affidavit of Thomas R. Lonergan*, ¶¶ 15-16 (describing Interstate Decal Fees and fees imposed on intrastate-operated vehicles as "combined" and used for the identical purposes of enforcing "the Motor Carrier Act, Motor Carrier Safety Act, Michigan Vehicle Code, size and weight regulation, and other laws governing commercial vehicles and motor carriers.")

Ohio, Kansas, or any of the other 36 SSRS States is perfectly acceptable too.

Third, the decision permits State regulatory commissions to increase interstate carrier costs without any real, practical justification. Lest there be some question in this regard, the Interstate Decal Fee cannot rest upon a hypothetical proposition (not even suggested by the Court of Appeals) that the Michigan-plated vehicles against which it is assessed somehow have a greater Michigan "presence" than vehicles plated elsewhere.[14] In fact, just the opposite is likely true. Interstate carriers plate their vehicles under the International Registration Plan ("IRP"), which authorizes "base-plating" in a single State that then collects, distributes, and apportions all other States' vehicle plating fees on a mileage basis. Michigan may be the base-plating State under the IRP merely because a motor carrier accrues mileage in Michigan and has a place of business there with a telephone line and an employee to make operational records available,[15] none of which demands a great "regulatory presence" within the State's borders. Conversely, large Michigan-based carriers with significant Michigan operations can side-step the Interstate Decal Fee entirely by plating their vehicles elsewhere at one of their many out-of-state locations. By way of example, TNT Holland Motor Express, Inc., although headquartered in Holland, Michigan, avoids the Interstate

[14] Note that, when carriers purchase their license plates in Michigan, a $15 portion of the plate fees they pay for each vehicle is already deposited in the Michigan Truck Safety Fund pursuant to Mich. Comp. Laws Ann. § 257.801(1)(k) (West 2003 Supp.).

[15] International Registration Plan, Art. II, §§ 210, 218 (2003 rev.).

Decal Fee by base-registering (plating) its large fleet in Illinois, not Michigan,[16] while a small, "mom and pop" carrier with only a few trucks and a Michigan office must pay the fee despite having virtually no Michigan presence at all.

There is indeed an irony in the fact that the trigger for application of the Interstate Decal Fee – the IRP base-plating of an interstate vehicle in Michigan – arises out of the same federal legislation that implemented the SSRS. Like the SSRS, the IRP was also adopted by the ISTEA in 1991[17] as part of a uniform, national plan to benefit interstate carriers. Just as it was concerned about creating uniformity and reducing costs in implementing the SSRS, Congress similarly standardized the IRP after heeding the House Public Works and Transportation Committee's advice that "[c]ompetition in the world marketplace dictates the elimination of unnecessary costs and the maximizing of efficiency." H.R. Rep. No. 102-171(I) (1991), *reprinted in* 1991 U.S.C.C.A.N. 1526, 1576. Furthermore,

[16] *Affidavit of James C. Crozier* presented to the Court of Claims and Court of Appeals. That carrier, now known as "USF Holland," reports through its publicly-traded parent that it had over $960 million in revenue in 2002 and operated over 4,400 vehicles from 60 terminals throughout the country. *See* http://www.usfc.com (Investor Relations; Financial Reports).

[17] Under the ISTEA, all States were given until September 30, 1996 to come into compliance with the IRP plating program. H.R. Conf. Rep. No. 102-404 (1991), *reprinted in* 1991 U.S.C.C.A.N. 1679, 1823. Pursuant to 49 U.S.C. § 31704 (2000 ed.), a State that is not a participant in the IRP may not "establish, maintain, or enforce a commercial motor vehicle registration law that limits the operation of a commercial motor vehicle that is not registered under the laws of the State" if the vehicle is IRP plated.

the key ingredient to the IRP is the *apportionment* of plating fees based upon the number of miles the carrier travels in each State, which not only "reduces the motor carrier's overall operating costs,"[18] but also stands guard against discriminatory taxation that burdens interstate commerce. *See American Trucking Ass'ns v. Scheiner*, 483 U.S. 266 (1987). It is not likely, therefore, that Congress could have intended to afford States free reign to increase the cost of either SSRS registration *or* IRP plating through the tacking on of a myriad of flat, unapportioned "regulatory fees" that frustrate the very purpose of Congress's action.

In sum, the lower court decision in this case must be overturned because, whether depicted as a "regulatory fee" or not, the Interstate Decal Fee violates Congress's proclamation that flat per-vehicle identification and registration fees imposed by State regulatory commissions are an unlawful burden upon interstate commerce and are forbidden by federal law unless limited to $10. Any other conclusion will subject interstate motor carriers to inconsistent, burdensome, and costly State regulation and interfere with the uniform federal regulatory program Congress has long envisioned.

[18] H.R. Rep. No. 102-171(I) (1991), *reprinted in* 1991 U.S.C.C.A.N. 1526, 1576.

CONCLUSION

For the foregoing reasons, the Petition for a Writ of Certiorari should be granted.

Respectfully submitted,

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APPENDIX A

STATE OF MICHIGAN

COURT OF APPEALS

WESTLAKE TRANSPORTATION, INC., VANDERKOOI CARRIERS, INC., EL TORO MOTOR FREIGHT, INC., MYRIAH, INC., PRISM, INC., GERRIGS TRUCKING & LEASING, INC., and BEST WAY EXPRESS, INC.,

Plaintiffs-Appellants,

and

AMERICAN TRUCKING ASSOCIATION, INC. and TNT HOLLAND MOTOR EXPRESS, INC.,

Intervening Plaintiffs-Appellants,

v

MICHIGAN PUBLIC SERVICE COMMISSION, DEPARTMENT OF TREASURY, and the STATE OF MICHIGAN,

Defendants-Appellees.

FOR PUBLICATION
March 11, 2003
9:00 a.m.

No. 226052; 226122
Court of Claims
LC No. 95-015628-CM

TROY CAB, INC., DEECO SERVICES, INC., d/b/a DEECO TRANSPORTATION, TIBERIO FRANK, d/b/a FAIRFIELD TOWING, ELEX, INC., d/b/a LAFOND EXPRESS, DALE CONSTINE & SONS, INC., CALCUT SALES & SERVICES, INC., d/b/a CALCUT TRUCKING COMPANY,

AMBASSADOR TRANSPORTATION, INC., HAWKINS STEEL CARTAGE, INC., MIDCON FREIGHT SYSTEMS, INC., JLH TRANSFER, INC., H & H ENTERPRISES, INC., d/b/a S & M CARTAGE, INC., CENTRAL TRANSPORT, INC., BANCROFT TRUCKING COMPANY, US TRUCK COMPANY, INC., WEST END CARTAGE, INC., CENTRAL CARTAGE COMPANY, CTX, INC., MOHAWK MOTOR MICHIGAN, INC., ECONOMY TRANSPORT, INC., MCKINLAY TRANSPORT LIMITED, MASON & DIXON LINES, INC., UNIVERSAL AMCAN LIMITED, ROMEO EXPEDITERS, INC., TOM THUMB SERVICES, INC., d/b/a REI, OJ TRANSPORT COMPANY, JLAW ENTERPRISES INC., and OJ TRANSPORT, INC.,

Plaintiffs-Appellants,

and

AMERICAN TRUCKING ASSOCIATION, INC., and TNT HOLLAND MOTOR EXPRESS, INC.,

Intervening Plaintiffs-Appellants,

v

MICHIGAN PUBLIC SERVICE COMMISSION, DEPARTMENT OF TREASURY, DEPARTMENT OF COMMERCE, and the STATE OF MICHIGAN,

Defendants-Appellees.

No. 226053; 226137
Court of Claims
LC No. 95-015631-CM

Updated Copy
May 9, 2003

Before: Markey, P.J., and Saad and Smolenski, JJ.

SMOLENSKI, J.

In these consolidated class actions, plaintiffs, individual class-representative trucking companies, and intervening plaintiffs, two trucking companies, appeal by right from a December 30, 1998, judgment of the Court of Claims that granted summary disposition in favor of defendants. The appeals were consolidated. We affirm.

I

This case involves the effect of several federal laws, specifically 49 USC 11501, 49 USC 11506, and subsection 601(h) of the Federal Aviation Administration Authorization Act of 1994 (FAAAA), PL 103-105, subsection 601(h), on various provisions of Michigan's Motor Carrier Act (MCA), MCL 475.1 *et seq*. This litigation began on January 3, 1995, when plaintiffs Westlake Transportation, Inc., et al., filed their complaint, alleging that the state's $100 annual fees for interstate and intrastate motor carriers were unconstitutional because federal laws, 49 USC 11506 and 49 USC 11501, respectively, preempted the state laws. On January 9, 1995, Troy Cab, Inc., et al., filed their complaint, and made similar allegations.

In Michigan, since 1933, motor-carrier regulation has been pursuant to the Michigan MCA. The act authorizes the Michigan Public Service Commission (PSC) to enforce the act. MCL 475.1(c); MCL 475.2. Under the MCA, motor carriers must pay a fee of $100 for each application filed with the commission for a certificate of authority or for a permit to operate intrastate. MCL 478.1. Also, motor carriers are required to pay an annual fee of $100 a vehicle

for the administration of the act. MCL 478.2(1) and (2). Subsection 1 applies to motor-carrier vehicles that operate intrastate pursuant to a certificate of authority, while subsection 2 applies to motor-carrier vehicles licensed in Michigan that engage entirely in interstate commerce.[1] The act also provides that motor carriers that are registered outside Michigan are required to pay a registration fee of $10 a vehicle. MCL 478.7.

In February 1995, intervening plaintiffs filed their complaint, alleging that the intrastate-decal fee violated the Commerce Clause, US Const, art I, § 8, cl 3, and were subsequently granted the right to intervene. Plaintiffs Westlake Transportation, Inc., et al., and intervening plaintiffs both amended their complaints, adopting the other's substantive claims. The plaintiffs' cases were consolidated in April 1995 and the classes were certified in June 1995.

On June 22, 1995, plaintiffs filed two separate motions for partial summary disposition pursuant to MCR 2.116(C)(10): one regarding their intrastate-preemption claim and the other regarding their interstate-preemption claim. On June 30, 1995, intervening plaintiffs filed their motion for partial summary disposition pursuant to MCR 2.116(C)(10), regarding their claim alleging violation of the Commerce Clause. On October 27, 1995, defendants renewed their own motion for summary disposition. The Court of Claims issued its opinion on October 13, 1998,

[1] The fees in MCL 478.1 and 478.2(1) will be referred to as the "intrastate fees," and the fee in MCL 478.2(2) will be referred to as the "interstate fee."

concluding that plaintiffs' and intervening plaintiffs' claims were meritless, and denied their motions for partial summary disposition in an order entered on November 12, 1998. Subsequently, the court granted defendants' motion for summary disposition "for the reasons defendants stated in their November 10, 1998 supplemental brief," which relied on the court's October 13, 1998, opinion.

The court concluded that § 601 of the FAAAA did not preempt MCL 478.2(1) because the federal law did not preempt safety-related regulatory fees. The court also found that MCL 478.2(2) was not preempted because the federal law imposed the $10 maximum only on "participating states," not "registration states." The court further determined that MCL 478.2(1) did not implicate the Commerce Clause because it did not burden foreign motor carriers more heavily as compared to Michigan motor carriers engaged in interstate commerce, since the state statute only affects Michigan motor carriers who engage solely in intrastate commerce. Plaintiffs filed a motion for reconsideration, which was denied. Plaintiffs and intervening plaintiffs now appeal by right.

II

Summary disposition of all or part of a claim or defense may be granted when

> [e]xcept as to the amount of damages, there is no genuine issue as to any material fact, and the moving party is entitled to judgment or partial judgment as a matter of law. [MCR 2.116(C)(10).]

A motion for summary disposition under MCR 2.116(C)(10) tests whether there is factual support for a claim, and is reviewed de novo on appeal. *Spiek v Dep't of*

Transportation, 456 Mich 331, 337; 572 NW2d 201 (1998). When deciding a motion for summary disposition, a court must consider the pleadings, affidavits, depositions, admissions, and other documentary evidence submitted in the light most favorable to the nonmoving party. *Ritchie-Gamester v Berkley,* 461 Mich 73, 76; 597 NW2d 517 (1999). A motion for summary disposition based on the lack of a material factual dispute must be supported by documentary evidence. MCR 2.116(G)(3)(b), *Meyer v Center Line,* 242 Mich App 560, 574; 619 NW2d 182 (2000). All reasonable inferences are to be drawn in favor of the nonmovant. *Bertrand v Alan Ford, Inc,* 449 Mich 606, 618; 537 NW2d 185 (1995).

III

Plaintiffs argue that MCL 478.2(2) is preempted by federal law, specifically 49 USC 11506.[2] Determining whether federal law preempts a state law presents an issue of statutory construction and is a question of law. *Konynenbelt v Flagstar Bank, FSB,* 242 Mich App 21, 27; 617 NW2d 706 (2000). Congressional intent is the cornerstone of preemption analysis. *Fort Halifax Packing Co, Inc v Coyne,* 482 US 1, 8; 107 S Ct 2211; 96 L Ed 2d 1 (1987).

The Supremacy Clause of the United States Constitution provides Congress with the power to preempt state law. US Const, art VI, cl 2. A general presumption exists in the law against federal preemption. *Duprey v Huron & E R Co, Inc,* 237 Mich App 662, 665; 604 NW2d 702 (1999).

[2] This statute is currently codified as 49 USC 14504; however, we will refer to the law as § 11506.

Federal preemption occurs only under certain conditions, such as when (1) Congress enacts a federal statute that expresses a clear intent to preempt state law, (2) an outright or actual conflict exists between federal and state law, (3) compliance with both federal and state law is effectively impossible, (4) an implicit barrier to state regulation exists in federal law, (5) Congress has legislated comprehensively, thereby occupying an entire field and leaving no room for supplemental state law, or (6) the state law stands as an obstacle to the accomplishment and execution of the full objectives of Congress. *Id.*

49 USC 11506 provided, in part:

> (b) General rule. – The requirement of a State that a motor carrier, providing transportation subject to jurisdiction under subchapter I of chapter 135 and providing transportation in that State, must register with the State is not an unreasonable burden on transportation referred to in section 13501 when the State registration is completed under standards of the Secretary under subsection (c). When a State registration requirement imposes obligations in excess of the standards of the Secretary, the part in excess is an unreasonable burden.
>
> (c) Single State registration system. –
>
> (1) In general. – The Secretary shall maintain standards for implementing a system under which –
>
> (A) a motor carrier is required to register annually with only one State by providing evidence of its Federal registration under chapter 139;

(B) the State of registration shall fully comply with standards prescribed under this section; and

(C) such single State registration shall be deemed to satisfy the registration requirements of all other States.

(2) Specific requirements. –

(A) Evidence of Federal registration; proof of insurance; payment of fees. – Under the standards of the Secretary implementing the single State registration system described in paragraph (1) of this subsection, only a State acting in its capacity as registration State under such single State system may require a motor carrier registered by the Secretary under this part –

(i) to file and maintain evidence of such Federal registration;

(ii) to file satisfactory proof of required insurance or qualification as a self-insurer;

(iii) to pay directly to such State fee amounts in accordance with the fee system established under subparagraph (B)(iv) of this paragraph, subject to allocation of fee revenues among all States in which the carrier operates and which participate in the single State registration system; and

(iv) to file the name of a local agent for service of process.

(B) Receipts; fee system. – The standards of the Secretary –

(i) shall require that the registration State issue a receipt, in a form prescribed under the

standards, reflecting that the carrier has filed proof of insurance as provided under subparagraph (A)(ii) of this paragraph and has paid fee amounts in accordance with the fee system established under clause (iv) of this subparagraph;

(ii) shall require that copies of the receipt issued under clause (i) of this subparagraph be kept in each of the carrier's commercial motor vehicles;

(iii) shall not require decals, stamps, cab cards, or any other means of registering or identifying specific vehicles operated by the carrier;

(iv) shall establish a fee system for the filing of proof of insurance as provided under subparagraph (A)(ii) of this paragraph that –

(I) is based on the number of commercial motor vehicles the carrier operates in a State and on the number of States in which the carrier operates;

(II) minimizes the costs of complying with the registration system; and

(III) results in a fee for each participating State that is equal to the fee, not to exceed $10 per vehicle, that such State collected or charged as of November 15, 1991; and

(v) shall not authorize the charging or collection of any fee for filing and maintaining evidence of Federal registration under subparagraph (A)(i) of this paragraph.

(C) Prohibited fees. – The charging or collection of any fee under this section that is not in accordance with the fee system established under

> subparagraph (B)(iv) of this paragraph shall be deemed to be a burden on interstate commerce.

The MCA applies to entities engaged in interstate commerce only to the extent it is consistent with federal law. MCL 476.12. MCL 478.2(2) provides, in pertinent part, "A motor carrier licensed in this state shall pay an annual fee of $100.00 for each vehicle operated by the motor carrier which is registered in this state and operating entirely in interstate commerce."[3]

Plaintiffs contend that the interstate fee was preempted both before and after the implementation of the Single State Registration System (SSRS) on January 1, 1994. With the implementation of the SSRS, § 11506 was amended and significant language changes were made. We will first address plaintiffs' preemption argument regarding § 11506 after January 1, 1994. However, before we do so, an understanding of the evolution of this federal law is helpful. The United States Supreme Court has summarized this evolution in *Yellow Transportation, Inc v Michigan,* 537 US ___, ___; 123 S Ct 371, 374-375; 154 L Ed 2d 377, 383-384 (2002):

> Beginning in 1965, Congress authorized States to require interstate motor carriers operating within their borders to register with the State proof of their Interstate Commerce Commission (ICC) interstate operating permits. Pub L 89-170, 79 Stat 648, 49 USC § 302(b)(2) (1970 ed). Congress provided that state registration requirements

[3] The subsection also provides that the fee is only $50 if the motor carrier begins operations after June 30th of the year. The other provisions in the subsection are not at issue in this appeal.

> would not constitute an undue burden on interstate commerce so long as they were consistent with regulations promulgated by the ICC. *Ibid.*

Prior to 1994, the ICC allowed States to charge interstate motor carriers annual registration fees of up to $10 per vehicle. See 49 CFR § 1023.33 (1992). As proof of registration, participating States would issue a stamp for each of the carrier's vehicles. § 1023.32. The stamp was affixed on a "uniform identification cab car[d]" carried in each vehicle, within the square bearing the name of the issuing State. § 1023.32(d)-(e). This system came to be known as the "bingo card" system. *Single-State Insurance Registration,* 9 ICC2d 610, 610 (1993).

The "bingo card" regime proved unsatisfactory to many who felt that the administrative burdens it placed on carriers and participating States outweighed the benefits to those States and to the public. HR Rep No 102-171, pt I, p 49 (1991), HR Conf Rep No 102-404, pp 437-438 (1991), US Code Cong & Admin News 1991, pp 1526, 1679. In the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA), Congress therefore directed the ICC to implement a new system to replace the "bingo card" regime.* See Pub L 102-240, § 4005, 105 Stat 1914, 49 USC § 11506(c) (1994 ed). Under the new system, called the Single State Registration System, "a motor carrier [would be] required to register annually with only one State," and "such single State registration [would] be deemed to satisfy the registration requirements of all other States." §§ 11506(c)(1)(A) and (C). Thus, one State would – on behalf of all other participating States – register a carrier's vehicles, file and maintain paperwork, and collect and distribute

registration fees. § 11506(c)(2)(A). Participation in the Single State Registration System was limited to those States that had elected to participate in the "bingo card" system. § 11506(c)(2)(D).

ISTEA also capped the per-vehicle registration fee that participating States could charge interstate motor carriers. Congress directed the ICC to "establish a fee system . . . that (I) will be based on the number of commercial motor vehicles the carrier operates in a State and on the number of States in which the carrier operates, (II) will minimize the costs of complying with the registration system, and (III) will result in a fee for each participating State that is equal to the fee, not to exceed $10 per vehicle, that such State collected or charged as of November 15, 1991." § 11506(c)(2)(B)(iv). Congress provided that the charging or collection of any fee not in accordance with the ICC's fee system would "be deemed to be a burden on interstate commerce." § 11506(c)(2)(C).

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*Congress abolished the ICC in 1995 and assigned responsibility for administering the new Single State Registration System to the Secretary of Transportation. See ICC Termination Act of 1995, Pub L 104-88, § 101, 109 Stat 803. The provisions of ISTEA governing the system were amended and recodified. See 49 USC § 14504(c). The Federal Highway Administration, under the Secretary of Transportation, adopted the ICC regulations that implemented the Single State Registration System, 61 Fed Reg 54706, 54707 (1996), and the Federal Motor Carrier Safety Administration now has authority to administer the system, 49 USC § 113(f)(1).

A

Plaintiffs argue that the federal statutory language is clear – a state may charge a maximum registration fee of $10 a vehicle to motor carriers engaged in interstate commerce, regardless of whether a motor carrier is registered in Michigan or another state. Plaintiffs acknowledge that MCL 478.7 reflects the mandate of § 11506 with regard to motor carriers registered out of state,[4] and asserts that motor carriers registered in Michigan are required to be charged similarly.

Defendants' counterargument is two-fold. First, § 11506 applies to registration fees only, not regulatory fees, and the interstate fee at issue is a regulatory fee. Second, the fee limit in § 11506 applies to participating states only, not the registration state. The court agreed with defendants' argument and granted summary disposition on this issue for the same reasons. Therefore, the key questions are (1) to whom does the fee limit in § 11506 apply, and (2) to what type of fees. The answers to these questions can be found in the language of the statute itself and the federal regulations that interpret it.

It is not an unreasonable burden on interstate commerce to require vehicles to register with a state; however,

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[4] MCL 478.7 provides, in part:

> (4) The annual fee levied on each interstate or foreign motor carrier vehicle operated in this state and licensed in another state or province of Canada shall be $10.00. The commission may enter into a reciprocal agreement with a state or province of Canada that does not charge vehicles licensed in this state economic regulatory fees or taxes and may waive the fee required under this subsection.

any registration requirements of a state that are in excess of the standards in subsection 11506(c) are considered an unreasonable burden. Subsection 11506(b). Under the SSRS, a motor carrier is required to register annually with only one state, and that registration satisfies the registration requirements of all the states. Subsection 11506(c)(1)(A). A motor carrier may only register with a participating state, a state which participated in the old "bingo card" system. Subsection 11506(c)(2)(D). The motor carrier must register with the state where its principal place of business is located, if it is a participating state, or else register with the participating state in which it operates the most vehicles. 49 CFR 367.3.[5] Therefore, a registration state, the state in which a motor carrier registers, is by definition a participating state. Michigan is a participating state, *Yellow Transportation, supra,* 123 S Ct 376; 154 L Ed 2d 385, and therefore, can be a registration state.

The registration state may require a motor carrier to (1) file proof of its federal registration (ICC permit), (2) file proof of insurance, (3) file the name of its agent for service of process, and (4) pay a fee. Subsection 11506(c)(2)(A). The registration state is then to issue the motor carrier a receipt, reflecting that proof of insurance was filed and that the fee was paid, a copy of which is to be kept in the carrier's vehicles. Subsection 11506(c)(2)(B). The fee is for the filing of the proof of insurance, and may not be charged for the filing of the motor carrier's ICC permit. Subsections 11506(c)(2)(B)(iv) and (v).

[5] 49 CFR 1023.1 *et seq.*, was recodified as 49 CFR 367.1 *et seq.*

In support of the registration fee, the motor carrier must file with the registration state a form that delineates (1) the number of vehicles it intends to operate in each participating state, (2) the fee each participating state charges each vehicle, (3) the total fee due each participating state, and (4) the total of all the fees due. 49 CFR 367.4(c)(4). The fee each participating state is allowed to charge each vehicle is equal to the amount the state charged or collected as of November 15, 1991, not to exceed $10. Subsection 11506(c)(2)(B)(iv)(III); 49 CFR 367.4(c)(4)(ii). Congress wanted to "minimize[ ] the costs of complying with the registration system" for the motor carriers, subsection 11506(c)(2)(B)(iv)(II), while at the same time preserving "revenues for the states which had participated in the bingo program," HR Conf Rep No 102-404 reprinted in 1991 USCCAN 1817. The fees a registration state collects on behalf of other participating states are remitted to those states monthly. 49 CFR 367.6. Thus, if a motor carrier registered in Michigan, it would first list the number of vehicles it operated in each participating state. Because Michigan is a participating state, it would need to list the number of vehicles it operated in Michigan. The fee Michigan could charge cannot exceed $10.

We find that the statutory language and its accompanying federal regulations are clear. A registration state is simply a participating state in which a motor carrier is registering. Therefore, when the statute states that a participating state may not charge a fee in excess of $10, this includes the registration state. To conclude otherwise, that a registration state could set its own fee, would contravene the express language and purpose of the statute.

The next question is whether the $100 fee in MCL 478.2(2) is a registration fee, so that it is subject to the limitation in § 11506, or whether it is a regulatory fee. Plaintiffs assert that the fee is for all practical purposes a registration fee. Because the fee must be paid at the time a motor carrier registers with a state, and in return for the fee receives an identification decal, plaintiffs contend that one can only conclude that the fee is, in actuality, a registration fee. We disagree. Faced with a similar situation in *Franks & Son, Inc v Washington,* 136 Wash 2d 737, 759-760; 966 P2d 1232 (1998), the Washington Supreme Court rejected the plaintiffs' argument that because the regulatory fee and federal identification fee were collected at the same time, an unlawful registration requirement resulted. The court adeptly stated, "We believe a more realistic rationale for concurrent collection of the two fees was administrative convenience and efficiency." *Id.* at 760.

We find that the $100 interstate fee could reasonably be classified as a regulatory fee because it is a fee imposed for the administration of the MCA, particularly covering costs of enforcing safety regulations.[6] If the purpose of a fee is to regulate an industry or service, it can be properly classified as a regulatory fee. *Bolt v Lansing,* 459 Mich 152, 161-162; 587 NW2d 264 (1998). Because the fee in

[6] Because vehicles licensed in Michigan that operate solely interstate are required to pay the $100 regulatory fee, the PSC waives the registration fee. *Schneider Nat'l Carriers, Inc v Michigan (On Remand),* 247 Mich App 716, 721; 637 NW2d 838 (2001). Hence, the registration fee Michigan charges for vehicles licensed in Michigan is $0, less than the $10 limit imposed by § 11506. Therefore, the registration fee is within the federal mandate.

MCL 478.2(2) is not a registration fee, it is not subject to preemption by 49 USC 11506.

Plaintiffs argue that the federal law prohibits construing the fee as a regulatory fee, citing *Roadway Express, Inc v Treasurer of State of Illinois,* 120 Ill App 3d 133; 458 NE2d 66 (1983). That case involved a $31 registration fee Illinois charged Ohio motor carriers. *Id.* at 133-134. At the time, the federal regulation allowed a maximum registration fee of $5 plus an additional reasonable fee imposed to defray the cost of the regulation of carriers within the state's borders. *Id.* at 135. Plaintiffs contend that *Roadway Express* "issued a warning" that "no such additional 'regulatory fee' was permissible after 1981" because the federal regulation interpreting § 11506 was amended in 1981 and set an absolute limit of $10 for identification fees. However, *Roadway Express* issued no such warning. The court merely noted, "again parenthetically," that the federal regulation, 49 CFR 1023.33 (redesignated), was amended and set the limit at $10. *Roadway Express, supra* at 135.

Plaintiffs appear to argue that because the amended federal regulation did not explicitly provide for an additional fee, one was hence prohibited. However, plaintiffs provide no support for their argument. Further, plaintiffs fail to recognize the import of two other regulations in existence at the time. 49 CFR 1023.105 (1991) (superseded) provided that the rules and regulations were not to be construed to affect the collection of taxes or fees by a state from motor carriers for the operation of vehicles within the borders of a state. 49 CFR 1023.104 (1991) (superseded) provided that states were "urged" to use fees collected for the purpose of defraying the cost of regulation of motor carriers within their borders. Therefore, the

ability of a state to collect fees in addition to the registration fees was not affected by the removal from § 1023.33 of the language providing for additional fees.[7]

B

Plaintiffs also argue that the interstate fee was prohibited before the creation of the SSRS in 1994, under the previous version of § 11506. Plaintiffs assert this argument because their complaint was filed in the beginning of 1995, and with a three-year period of limitation, plaintiffs contend that they are entitled to a refund for the excess fees they have paid since 1992.

Before the 1994 enactment of the SSRS, § 11506 read, in pertinent part:

> (b) The requirement of a State that a motor carrier . . . register the certificate or permit issued to the carrier under section 10922 or 10923 of this title is not an unreasonable burden on transportation referred to in section 10521(a)(1) and (2) of this title when the registration is completed under standards of the Commission under

[7] We note that the substance of 49 CFR 1023.104 and 1023.105 was not included in the 1994 amendments, 49 CFR 1023.1-1023.6. However, neither was there any express prohibition on state-imposed regulatory fees. The statute and its regulations address registration requirements only. Because there is a presumption against federal preemption, we believe that Congress's silence cannot be interpreted as prohibiting state regulatory fees, see *Wisconsin Pub Intervenor v Mortier,* 501 US 597, 607; 111 S Ct 2476; 115 L Ed 2d 532 (1991), particularly given that regulatory and registration fees can coexist in the same field without conflicting, *Duprey, supra* at 665.

> subsection (c) of this section. When a State registration requirement imposes obligations in excess of the standards, the part in excess is an unreasonable burden.
>
> (c)(1) The Commission shall maintain standards and amendments to standards (A) prepared and certified to it by the national organization of the State Commissions, and (B) prescribed by the Commission. . . .

The Commission prescribed the following interpretive regulation:

> The application for the issuance of such identification stamps or number shall . . . be duly completed and executed by an official of the motor carrier, and shall be accompanied by the fee, if any, prescribed by the law of such State; provided, however, that such fee shall not exceed $10 for the issuance of each such identification stamp; and provided further (when the State Commission assigns an identification number in lieu of issuing an identification stamp or stamps), that such fee shall not exceed $10 for each vehicle operated under the authority of the motor carrier identified in the cab card bearing such identification number. [49 CFR 1023.33 (superseded).]

The pre-1994 federal regulation substantively mirrored subsection 11506(c) as amended in 1994. Because we concluded that the interstate fee is a regulatory fee, it is outside the scope of the federal law and was not preempted.[8]

[8] We note that the cases from other jurisdictions that plaintiffs cite are inapplicable in this case. The conclusion in this case turns on

(Continued on following page)

Accordingly, the court did not err in granting defendants summary disposition.

IV

In their complaints, plaintiffs and intervening plaintiffs allege that the intrastate fees in MCL 478.1 and MCL 478.2(1) were preempted by § 601 of the FAAAA. Subsection 601(h), which became effective on January 1, 1995, prohibited state regulation of prices, routes, or services of motor carriers, save for a few delineated exceptions. (Currently codified as 49 USC 14501[c].)

Plaintiffs argue that the court erred in granting defendants summary disposition on this issue before discovery was complete.[9] Plaintiffs assert that they should have been allowed an opportunity to conduct additional discovery in order to show that, as utilized, the intrastate fees are prohibited by federal law.

In re Fed Preemption of Provisions of the Motor Carrier Act, 223 Mich App 288, 302; 566 NW2d 299 (1997), held that § 601 did not preempt the entire MCA and did not indicate an intent to preempt fee provisions such as MCL 478.1 and MCL 478.2. The Court noted that in response to the enactment of the FAAAA, the PSC "issued considered decisions that indicated how its regulation of the trucking industry in Michigan was affected by federal

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whether the interstate fee is classified as a regulatory fee or a registration fee. In the cases plaintiffs cite, there was no disagreement that the fee at issue was a registration fee.

[9] We note that plaintiffs do not contest the court's summary-disposition ruling, that § 601 did not preempt the intrastate fees.

legislation preempting at least some aspects of state regulation." *In re Motor Carrier Act, supra* at 300. In regard to the fee provisions at issue, the Court stated:

> The PSC still has significant regulatory obligations. For example, the PSC must supervise and regulate the safety of motor carrier operations. MCL 479.41; MSA 22.587(1). There is still a certification process. It follows that the fees for obtaining a certificate of authority, MCL 478.1; MSA 22.560, for protesting an application for a certificate, MCL 478.1a; MSA 22.560(1), and for administering the act, MCL 478.2(1); MSA 22.561(1), are unaffected by the preemptive effect of § 601. In fact, *because the PSC is not using its resources to enforce preempted portions of the Motor Carrier Act, the fees collected by the PSC are not related to the preempted provisions and rules.* Indeed, appellants Central Transport and Universal Am-Can have not shown that the cost of the PSC's operations has ever been totally funded by the fees it collects, and they have not provided any reason to believe that the fees collected were or can be used only for what is now preempted economic regulation. [*Id.* at 302-303; emphasis added.]

Plaintiffs contend that the PSC intrastate fees were being used to fund preempted portions of the MCA, and, thus, the fees were related to a preempted provision. Therefore, the fees were also preempted. Plaintiffs did not submit any documentary evidence below in support of this contention. Plaintiffs argue that they had intended to do so, but their opportunity was foreclosed when the court denied their motion for partial stay and bifurcation of issues. Plaintiffs requested a 90- to 120-day stay in the proceedings to conduct discovery in order to present a

factual record to the court in a supplemental brief in response to the decision in *In re Motor Carrier Act, supra*; however, the court denied the motion without prejudice because it believed its summary-disposition ruling would cover the issue.

A court's decision regarding matters of discovery is reviewed on appeal for an abuse of discretion. *In re Pott,* 234 Mich App 369, 373; 593 NW2d 685 (1999). Plaintiffs could not address this Court's decision in *In re Motor Carrier Act, supra,* in their original motions for partial summary disposition because they were filed and argued in 1995, and the case was not decided until April 25, 1997. However, plaintiffs did not file their motion for partial stay and bifurcation of issues until March 1998, nearly one year later. The record indicates that plaintiffs were conducting discovery during this entire time, yet never sought evidence relating to this issue.

We find that plaintiffs had ample opportunity to conduct discovery following the decision in *In re Motor Carrier Act, supra,* and file a supplemental brief containing their findings. Given that one year had passed, we also find that there is no reason to believe that had plaintiffs been given another three or four months in which to conduct discovery, plaintiffs would have uncovered a factual basis for their claim. Furthermore, we note that by stipulation, discovery was to be completed 180 days after the court issued its ruling on the parties' motions for summary disposition.

Plaintiffs assert in their reply brief that they are not arguing that they were prevented from conducting discovery, but that they were denied an opportunity to supplement their motion papers. However, the court did not

foreclose plaintiffs' opportunity to present their argument. They could have filed additional briefs at any time before the court issued its ruling. In fact, on January 28, 1998, plaintiffs filed a supplemental brief in support of their motions for summary disposition and in opposition to defendants' motion, in which they specifically mentioned *In re Motor Carrier Act, supra*. This indicates plaintiffs were well aware of the import of the case, and could have conducted discovery and presented their argument accordingly. Plaintiffs mention that defendants did not submit the opinion as authority until January 1998. However, *In re Motor Carrier Act* was decided in April 1997, and nothing prevented plaintiffs from proactively distinguishing their case from it.

Moreover, the court specifically invited plaintiffs to present their argument again if they thought its ruling did not adequately cover the issue. Plaintiffs did file a motion for reconsideration after the court issued its orders on the parties' motions for summary disposition, yet did not reraise this issue. We recognize that plaintiffs renewed their motion to stay on October 8, 1998; however, this was before the court issued its ruling. Because the court had not yet issued its ruling, plaintiffs could have attempted to conduct discovery after its first motion was denied.

Therefore, we conclude that the court did not abuse its discretion in denying plaintiffs' request to stay the proceedings in order to conduct additional discovery. A decision of a court that obtained the correct result, albeit for a different reason, will be affirmed on appeal. *Lavey v Mills,* 248 Mich App 244, 250; 639 NW2d 261 (2001).

V

Plaintiffs Troy Cab, Inc., et al., allege that the intrastate fees in MCL 478.1 and MCL 478.2(1) are unconstitutional taxes in violation of various sections of the Michigan Constitution. The fees at issue are credited to the PSC. MCL 478.6. Whether a charge is a permissible fee or an illegal tax is a question of law. *Bolt, supra* at 158. A court's factual findings are reviewed for clear error. A finding is clearly erroneous when, although there is evidence to support it, upon reviewing the entire record, the appellate court is left with a definite and firm conviction that a mistake was made. *Christiansen v Gerrish Twp,* 239 Mich App 380, 387; 608 NW2d 83 (2000).

In determining whether a charge imposed by a unit of government is a fee or a tax, a court must consider: (1) whether the charge serves a regulatory purpose rather than operates as a means of raising revenue; (2) whether the charge is proportionate to the necessary costs of the service to which it is related; and (3) whether the payor has the ability to refuse or limit its use of the service to which the charge is related. *Bolt, supra* at 161-162. These factors should be considered in their totality, and a weakness in one area does not mandate a particular finding. *Id.* at 167; *Graham v Kochville Twp,* 236 Mich App 141, 151; 599 NW2d 793 (1999).

Taxes have a primary purpose of raising revenue, while fees are usually in exchange for a service rendered or a benefit conferred. *Bolt, supra* at 162. The stated purpose of the intrastate fees is for "the administration of [the MCA]." MCL 478.1; MCL 478.2(1). The express purposes of the act are

> to confer upon the [PSC] the power and authority and to make it its duty to supervise and regulate the transportation of property by motor vehicle for hire upon and over the public highways of this state in all matters whether specifically mentioned herein or not, so as to: (a) Relieve all future undue burdens and congestion on the highways arising by reason of the use of the highways by motor vehicles operated by motor carriers; (b) protect and conserve the highways and protect the safety and welfare of the traveling and shipping public in their use of the highways; (c) promote competitive and efficient transportation services; (d) meet the needs of motor carriers, shippers, receivers, and consumers; (e) allow a variety of quality, price, and service options to meet changing market demands and the diverse requirements of the shipping public; (f) allow the most productive use of equipment and energy resources; (g) provide the opportunity for efficient and well-managed motor carriers to earn adequate profits and attract capital; (h) promote intermodal transportation; (i) prevent unjust discrimination; (j) promote greater participation by minorities in the motor carrier system; (k) provide and maintain service to small communities and small shippers; (l) prevent evasion of this act through any device or arrangement; (m) promote entrepreneurship in the motor carrier industry by allowing greater contract carrier economic and entry flexibility; and (n) promote the use of jointly considered and initiated rates, classifications, divisions, allowances,

> charges, or rules of motor carriers under commission approved agreements. [MCL 475.2.[10]]

This language indicates the exactions are regulatory.

Taxes are designed to raise revenue for the general public, while a fee "confers benefits only upon the particular people who pay the fee, not the general public or even a portion of the public who do not pay the fee." *Graham, supra* at 151. In this case, in exchange for the fees, a motor carrier receives the right to operate its trucks in Michigan, and the fees are used to enforce the provisions of the act that carry out the above-listed purposes. Thus, there is a direct benefit to the one who pays the fees. We recognize that promoting and regulating safe use of the highways benefits the general public as well. However, a regulatory fee can have dual purposes and still maintain its regulatory characterization. As long as the primary purpose of a fee is regulatory in nature, the fee can also raise money provided that it is in support of the underlying regulatory purpose, *id.* at 151, and thus benefit the general public.

Plaintiffs' argument focuses on the second prong of the test, whether the fees are proportional to the cost of the services to which they relate. Plaintiffs assert that in 1982, when the fees were increased,[11] they became taxes because the amounts collected were in excess of the

[10] Any purposes that related to economic regulation were preempted by § 601 of the FAAAA as of January 1, 1995, and the PSC ceased to enforce those regulations. *In re Motor Carrier Act, supra* at 300. However, the Legislature has yet to amend the MCA to reflect the federal preemption.

[11] 1982 PA 399 raised the fees in MCL 478.1 and MCL 478.2(1) to their current levels.

expenses related to the services. A fee must be proportionate to the cost of the regulation, but its amount is presumed reasonable unless its unreasonableness is established. *Id.* at 151. "[W]here revenue generated by a regulatory 'fee' exceeds the cost of regulation, the 'fee' is actually a tax in disguise." *Gorney v Madison Hgts,* 211 Mich App 265, 268; 535 NW2d 263 (1995).

In support of their contention, plaintiffs presented two affidavits and a senate fiscal report. We find the affidavits of minimal value in determining whether the fees are unreasonable. Neither of the affiants worked for the PSC and they could only offer their opinion regarding how the fees were spent. The senate fiscal report, created by a senate fiscal analyst, showed how the funds received by the PSC were utilized for fiscal years 1982-83 to 1994-95,[12] and one of the charts showed that there was a surplus nearly every year.[13]

[12] Plaintiffs also assert that the report shows that the fees supported activities not related to the regulation of motor carriers because a portion was allocated to the State Police, Department of Commerce, and Department of Civil Service. However, it is the duty of the police to assist the PSC in enforcement of the MCA, MCL 479.13, and the Department of Commerce provides administrative support to the PSC that enables it to carry out its duties. It follows that the PSC would allocate a portion of the fees to them. In addition, the allocation of a very small portion of the PSC's revenues to the Department of Civil Service is mandated by the Legislature in accordance with the constitution to fund the civil service. Const 1963, art 11, § 5. The allocations to this department averaged only $23,000 each year when revenues ranged from $3.2 to $6.3 million.

[13] Plaintiffs present no evidence regarding the proportionality of the fees after 1995, when the PSC ceased any economic regulatory functions as mandated by § 601 of the FAAAA. Therefore, we have no basis on which to determine the proportionality of the fees after 1995.

However, defendants dispute the accuracy of the figures in the report. Defendants note that charts reflect the total fees collected, not just the fees collected pursuant to MCL 478.1 and MCL 478.2(1), and defendants got confirmation from the author of the report that appropriations to the Michigan Truck Safety Fund were not considered. Therefore, defendants contend that the excess amounts were distorted.

It is clear that the report on which plaintiffs rely included all fee revenues without excluding nonchallenged interstate fees collected pursuant to the SSRS and its predecessor system. Therefore, the surplus figures were distorted to some degree. Even without reducing the surplus figures, the aggregate excess during the thirteen years was only 11.7 percent, a relatively small percentage. The test is whether the fee is proportional, not whether it is equal, to the amount required to support the services it regulates. *Graham, supra* at 151. We conclude that the Court of Claims did not clearly err in finding that the fees were not "wholly disproportionate."

Lastly, plaintiffs argue that the exaction is not voluntary because a motor carrier cannot operate its trucks in Michigan without paying it. Defendants argue that a motor carrier has a choice with regard to what extent its trucks will have a presence in Michigan, and, therefore, the exaction is voluntary. While this is true in regard to the application fee, MCL 478.1, defendants' logic is erroneous in regard to the administration fee, MCL 478.2(1), because every vehicle licensed in Michigan must pay this fee irrespective of where it operates. Even if we were to view the exaction as more compulsory than voluntary, when the totality of factors are considered, we believe the exactions are most properly classified as regulatory fees.

Bolt, supra at 167; *Graham, supra* at 151. Therefore, the court did not err in granting defendants summary disposition on this issue.

VI

Plaintiffs next argue that the intrastate and interstate fees violate the Equal Protection Clause of the United States and Michigan Constitutions because they apply to "for-hire" motor carriers only and not to private motor carriers.[14] Both the federal and state constitutions guarantee equal protection, and afford similar protection. Const 1963, art 1, § 2; US Const, Am XIV, § 1; *Vargo v Sauer,* 457 Mich 49, 60; 576 NW2d 656 (1998). A court's ruling whether a statute violates equal protection is a question of law. *McDougall v Schanz,* 461 Mich 15, 24; 597 NW2d 148 (1999).

Legislative classifications that do not implicate a fundamental right or target a suspect class are presumed to be constitutional if they have a rational basis, and one who challenges such a statute has the burden of showing that it bears no rational relation to some independent and legitimate legislative end. *TIG Ins Co, Inc v Dep't of Treasury,* 464 Mich 548, 557; 629 NW2d 402 (2001); *Vargo, supra* at 60. Under the rational-basis test, a statute will ordinarily be sustained if it can be said to advance a legitimate governmental interest, even if the law seems to be unwise or works to the disadvantage of a particular

[14] Because we concluded that the fees are regulatory, plaintiffs additional argument, that the fees violate Michigan's Uniform Taxation Clause, is without merit.

group, or if the rationale seems to be tenuous. *People v Copper (After Remand),* 220 Mich App 368, 372-373; 559 NW2d 90 (1996). A legislative classification may not be set aside if any set of facts may reasonably be conceived to justify it. *Id.* at 373.

Before 1994, the fees were used to fund the economic- and safety-regulation of motor carriers. Motor carriers do not include private carriers. MCL 475.1(i). A private carrier is "any person engaged in the transportation of property by motor vehicle upon public highways where the transportation is incidental to, or in furtherance of, any commercial enterprise of the person, other than transportation." MCL 475.1(q). A "for hire" motor carrier is one that receives "remuneration or reward of any kind, paid or promised, either directly or indirectly." MCL 475.1(e). Thus, "for hire" motor carriers are engaged in the business of transportation.

The rationale behind the classification distinction may be supported by facts either known or reasonably assumed, even if those facts may be debatable. *TIG Ins, supra* at 557, citing *Crego v Coleman,* 463 Mich 248, 259-260; 615 NW2d 218 (2000). We believe it is reasonable to assume that motor carriers have larger fleets than private carriers, operate under competitive pressures, and operate more frequently than private carriers. We can surmise that these carriers are in need of being more closely scrutinized in order to protect the general public, which also uses the public highways; thus, the need for regulations and fees to cover their enforcement.

Even after economic regulation of the motor carriers ceased, as *In re Motor Carrier Act, supra* at 302, recognized, the PSC "still has significant regulatory obligations,"

including supervising and regulating the safety of motor-carrier operations, as well as the certification process. Therefore, the need for fees to support such regulations were not eliminated after the FAAAA was enacted. The same concerns that existed before still existed. Accordingly, we conclude that the Legislature's classification bore a rational relation to a legitimate state purpose, and the court did not err in granting defendants summary disposition.

VII

Finally, intervening plaintiffs argue that the intrastate fee imposed by MCL 478.2(1) violates the Commerce Clause because it burdens interstate commerce. Again, we disagree, but for a different reason than stated by the Court of Claims.

The Commerce Clause provides that Congress "shall have power . . . [t]o regulate commerce . . . among the several states. . . ." US Const, art I, § 8, cl 3. The "dormant Commerce Clause" "denies the States the power unjustifiably to discriminate against or burden the interstate flow of articles of commerce." *Oregon Waste Systems, Inc v Dep't of Environmental Quality of the State of Oregon,* 511 US 93, 98; 114 S Ct 1345; 128 L Ed 2d 13 (1994).

The Court of Claims held that the Commerce Clause was not implicated because the fee applied to intrastate carriers only. However, any tax or regulation that affects interstate travel, even if imposed solely on intrastate commerce, is subject to Commerce Clause analysis. *Citizens for Logical Alternatives & Responsible Environment v Clare Co Bd of Comm'rs,* 211 Mich App 494, 499; 536 NW2d 286 (1995). Because the fee is imposed on any

vehicle that operates intrastate pursuant to a certificate of authority, even if it also travels interstate, the fee affects interstate commerce, and thus, implicates the dormant Commerce Clause. Although the Court of Claims did not address this issue, our review is nevertheless proper because whether a statute violates the Commerce Clause is a question of law. *Gillette Co v Dep't of Treasury,* 198 Mich App 303, 311; 497 NW2d 595 (1993).

"A statute is presumed constitutional absent a clear showing to the contrary." *Caterpillar, Inc v Dep't of Treasury,* 440 Mich 400, 413; 488 NW2d 182 (1992). The test for determining whether a regulatory fee violates the Commerce Clause involves a two-tiered approach.[15] The first step is to determine whether the statute discriminates against interstate interests or merely regulates evenhandedly with only incidental effects upon interstate commerce. *Oregon Waste, supra* at 99. "'[D]iscrimination' simply means differential treatment of in-state and out-of-state economic interests that benefits the former and burdens the latter." *Id.* The United States Supreme Court has recognized that there is no clear line separating the two categories. The critical consideration is the overall effect of the statute on both local and interstate activity. *Brown-Forman Distillers Corp v New York State Liquor Auth,* 476

[15] Intervening plaintiffs contend that the four-pronged test enunciated in *Complete Auto Transit, Inc v Brady,* 430 US 274, 279; 97 S Ct 1076; 51 L Ed 2d 326 (1977), and utilized in *American Trucking Ass'ns, Inc v Scheiner,* 483 US 266, 283; 107 S Ct 2829; 97 L Ed 2d 226 (1987), is applicable. However, this test is used to analyze the constitutionality of state-taxation statutes that tax interstate commerce itself, i.e., taxes for the privilege of doing business in the state, *Complete Auto, supra* at 279, not regulatory statutes.

US 573, 579; 106 S Ct 2080; 90 L Ed 2d 552 (1986). A state law will be invalidated if it "discriminate[s] against an article of commerce by reason of its origin or destination out of State." *C & A Carbone, Inc v Town of Clarkstown, New York,* 511 US 383, 390; 114 S Ct 1677; 128 L Ed 2d 399 (1994).

In making this determination, we must consider all the provisions of the challenged statute. MCL 478.2(1) requires that motor carriers that are licensed in Michigan and travel solely intrastate or travel both intrastate and interstate, a "mixed" carrier, must pay a fee of $100 for each vehicle. MCL 478.2(2) requires that motor carriers that are licensed in Michigan and travel solely interstate must also pay the $100 fee. Therefore, the regulatory fee is the same for all motor carriers licensed in Michigan, regardless of their final destination. It does not directly regulate interstate commerce, *Pike v Bruce Church, Inc,* 397 US 137, 142; 90 S Ct 844; 25 L Ed 2d 174 (1970), nor is economic protectionism at issue, *Arkansas Electric Coop Corp v Arkansas Pub Service Comm,* 461 US 375, 394; 103 S Ct 1905; 76 L Ed 2d 1 (1983).

Defendants assert that the majority of vehicles that pay the fee operate solely intrastate, which presumably leads to their conclusion that the effect on interstate commerce is minimal. However, the number of interstate vehicles burdened is inconsequential to a finding of discrimination. *New Energy Co of Indiana v Limbach,* 486 US 269, 276-277; 108 S Ct 1803; 100 L Ed 2d 302 (1988).

Intervening plaintiffs argue that the mixed carrier invariably will pay a higher per-mile fee than the carrier who operates solely intrastate. They assert that because the fee is a flat annual fee, in order to receive the greatest

benefit for the fee, a carrier would need to maximize its intrastate operations and this could potentially affect a carrier's economic decisions by discouraging an intrastate carrier from engaging in interstate commerce.

While this may be so, it is a matter of pure speculation. Intervening plaintiffs present no evidence that any trucking firm's route choices are affected by the imposition of the fee, only surmising that this could occur in the hypothetical. Only one affidavit was submitted by intervening plaintiffs, in which James Crozier, manager of licensing and fuel for intervening plaintiff TNT Holland Motor Express, Inc., stated that mixed carriers often top off their interstate loads with intrastate hauls or transport intrastate loads in between interstate hauls. However, he never averred that this was done only because of the fee imposed by MCL 478.2(1). Regardless of the $100 fee, topping off loads or adding intrastate hauls in between interstate ones is an economically efficient decision for the motor carriers. We do not find that the fee raises a significant barrier to participation in interstate trade. Any effect the fee has on interstate commerce is incidental and does not rise to the level of discrimination.

Having concluded that the statute regulates even-handedly, it will be upheld unless the burden it imposes on interstate commerce is "clearly excessive in relation to the putative local benefits." *Pike, supra* at 142. Intervening plaintiffs do not contest that the statute serves a legitimate nondiscriminatory purpose, i.e., funding safety and related regulations. This is an exercise of the state's police power and serves a critical function in protecting the people who use Michigan's highways. Great deference is given to state legislation in the field of highway safety regulation and a strong presumption in favor of its validity

exists. *Raymond Motor Transportation, Inc v Rice,* 434 US 429, 443; 98 S Ct 787; 54 L Ed 2d 664 (1978). On the basis of the record before us, we cannot say that the burden imposed on interstate commerce by the $100 annual fee is clearly excessive in relation to Michigan's substantial interest in regulating safety on its highways. Therefore, we hold that MCL 478.2(1) does not violate the Commerce Clause. Accordingly, we affirm the Court of Claims' summary-disposition ruling in favor of defendants even though it reached its decision for the wrong reason. *Lavey, supra* at 250.

Affirmed.

/s/ Michael R. Smolenski
/s/ Jane E. Markey
/s/ Henry William Saad

APPENDIX B

STATE OF MICHIGAN

IN THE COURT OF CLAIMS

WESTLAKE TRANSPORTATION, INC., et al.,

Plaintiffs,

and

AMERICAN TRUCKING ASSOCIATIONS, INC. and TNT HOLLAND MOTOR EXPRESS, INC.,

Intervening Plaintiffs,

-vs-

MICHIGAN PUBLIC SERVICE COMMISSION, et al.,

Defendants. /

DOCKET NO. 95-15628-CM

OPINION

TROY CAB, INC., et al.,

Plaintiffs,

and

AMERICAN TRUCKING ASSOCIATIONS, INC. and TNT HOLLAND MOTOR EXPRESS, INC.,

Intervening Plaintiffs,

-vs-

STATE OF MICHIGAN, et al.,

Defendants. /

DOCKET NO. 95-15631-CM

OPINION

Before the Court in these consolidated class actions are three motions for partial summary disposition brought by Plaintiffs and Intervening Plaintiffs. All Plaintiffs collectively challenge the constitutionality and lawfulness of certain fees imposed on the trucking industry by Michigan statutes as administered by the Public Service Commission. The constitutional challenges are brought under both the federal and state constitutions, although those brought under Michigan fundamental law are not the subject of these motions. The nonconstitutional claims are predicated on federal statute and assert that the challenged fees violate such supreme law and thus must be enjoined.

The fees here challenged are mandated by Michigan's Motor Carrier Act (MCA or Act), 1933 PA 254 as amended, MCL 475.1, et seq; MSA 22.531, et seq. They are three in number and are delineated in two sections of article IV of the Act.

First there is the intrastate authority fee of $100.00 required when submitting to the Public Service Commission (PSC or Commission) an application for a certificate of authority or a permit, whether granted or not. That application fee is authorized by article IV, section 1 of the Act, MCL 478.1; MSA 22.560.

Second, section 2 of article IV, MCL 478.2; MSA 22.561, mandates annual fees of $100.00 for each motor vehicle operated by a motor carrier. Subsection (1) applies that requirement "for the administration of this act" to each vehicle used in intrastate service. Subsection (2) makes the same requirement applicable to each vehicle "registered in this state and operating entirely in interstate commerce" by a "motor carrier licensed in this state."

According to Plaintiffs, all three fees are unlawful because they, and especially the intrastate vehicle fee authorized by section 2(1), have been preempted by federal law. Further, they assert that the section 2(2) fee on each Michigan-registered vehicle operated entirely in interstate commerce by a Michigan-licensed motor carrier contravenes another provision of federal law that created the Single State Registration System for motor carriers in interstate commerce. Finally, they complain also that the section 2(1) fee imposed on vehicles operated in intrastate service offends the dormant Commerce Clause of the United States Constitution by discriminating against foreign motor carriers operating substantially in interstate commerce. The Court will treat each claim in order, beginning with that on which Plaintiffs primarily rely.

FEDERAL PREEMPTION

Federal preemption has its origin in the Supremacy Clause of US Const, art VI, which declares that the laws of the United States "shall be the supreme Law of the Land." However, federal provisions that invalidate state law must be narrowly tailored to support a presumption against preemption of state law. *Ryan* v. *Brunswick Corp,* 454 Mich 20, 27; 557 NW2d 541 (1997). State police powers are not superseded by federal provisions unless that is the clear and unequivocal intent of Congress. *Id.* This is especially true of state regulation of matters relating to health and safety. *Id.* The plain meaning of federal provisions must be given effect unless there is reason to think Congress intended a more restrictive reading. *Id,* p 28. Courts must seek the congressional intent from the text, structure and purpose of the federal provision as a whole. *Id.* Such considerations include "'the way in which

Congress intended the statute and its surrounding regulatory scheme to affect business, consumers, and the law.'" *Id,* quoting *Medtronic, Inc* v *Lohr,* 518 US ___; 116 S Ct 2240, 2251; 135 L Ed 2d 700 (1996).

The Federal Aviation Administration Authorization Act of 1994 (FAAAA), PL 103-305, contains § 601, which added sub-section (h), "Preemption of State economic regulation of motor carriers," to 49 USC 11501, subsequently recodified as 49 USC 14501.[1] By virtue of § 601, effective January 1, 1995, the FAAAA preempts state economic regulation of motor carriers by providing that a state "may not enact or enforce a law, regulation, or other provision having the force and effect of law related to a price, route, or service of any motor carrier . . . or any motor private carrier with respect to the transportation of property." 49 USC 11501 (h) (1), now recodified as 49 USC 14501 (c) (1). Such language clearly and expressly prohibits a state from enacting or enforcing laws related to economic aspects of the service provided by a motor carrier. See *Fitzpatrick* v *Simmons Airlines, Inc,* 218 Mich App 689, 691; 555 NW2d 479 (1996). The question then becomes whether Michigan's MCA is a law related to the price, route or service of a motor carrier. *Id.*

In *Morales* v *Trans World Airlines, Inc,* 504 US 374, 383; 112 S Ct 2031; 119 L Ed 2d 157 (1992), the United States Supreme Court concluded that, as used in a similar statute respecting the service of air carriers, the phrase

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[1] The entirety of this preemption provision is quoted in *In re Federal Preemption of Provisions of the Motor Carrier Act,* 223 Mich App 288, 293-294; 566 NW2d 299 (1997), lv den 458 Mich 852 (1998).

"relating to" expressed a broad preemptive congressional purpose. See *In re Federal Preemption of Provisions of the Motor Carrier Act,* 223 Mich App 288, 300-301; 566 NW2d 299 (1997), lv den 458 Mich 852 (1998); *Fitzpatrick,* supra. *Morales*, p 384, determined that state laws having a "connection with" or "reference to" airline services were "related to" the federal act for purposes of preemption. See *Fitzpatrick*, p 692. Indeed, *Morales*, p 386, rejected the view that the federal act's preemptive scope is limited to state laws specifically addressed to the air carrier industry, ruling instead that a state law may be preempted even if it is not designed to affect the area of preemption or its effect on that area is only indirect.[2] *Morales* held, p 391, that a state law requiring truth-in-advertising of air fares was related to the price and service of carriers and was therefore preempted by the federal act. Accord *American Airlines, Inc* v *Wolens,* 513 US 219; 115 S Ct 817; 130 L Ed 2d 715, 724-725 (1995): state consumer fraud law is preempted where applied to rates and services of airline frequent-flyer programs. Thus, the *Fitzpatrick* court held, supra, that fidelity to the broad interpretation rendered by the United States Supreme Court in *Morales* required the conclusion that judicial enforcement of the Michigan Civil

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[2] On the other hand, *Morales,* p 390, left room for state actions "too tenuous, remote, or peripheral" to have preemptive effect – without, however, explaining what was meant by those terms of qualification or how they should be applied to "a borderline question." Rather, *Morales* said only that "we express no views about where it would be appropriate to draw the line." *Id,* quoting *Shaw* v *Delta Air Lines, Inc,* 463 US 85, 100 n 21; 103 S Ct 2890; 77 L Ed 2d 490 (1983).

Rights Act to protect against employment discrimination in the air carrier industry was likewise preempted.[3]

If federal legislation preempts some applications of the Michigan Civil Rights Act to the employment practices of air carriers in this state, as ruled in *Fitzpatrick*, then a fortiori the same preemptive effect of the FAAAA must apply to any economic regulation imposed on motor carriers by the MCA.[4] Thus, the question is whether the Michigan requirements challenged here, viz., the fees authorized by art IV, §§ 1 & 2 of the MCA, are manifestations of economic regulation. If so, they are preempted. If not, they may still be preempted if related, no matter how indirectly, to the price, route or service of a motor carrier. See *Morales,* supra, p 386. However, where such indirect relationship is "too tenuous, remote, or peripheral" to

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[3] That ruling was recently limited by *Gilman* v *Northwest Airlines, Inc*, 230 Mich App 293, 303-304; ___ NW2d ___ (1998), which held that the same federal statute does not preempt the Michigan Civil Rights Act prohibitions of age and sex discrimination because those employee characteristics have no apparent connection or relation to an airline's routes, prices or services. *Gilman*, at 298-300, distinguished *Fitzpatrick,* supra, which had dealt only with height and weight discrimination in employment.

[4] The PSC acknowledges such preemptive effect on specific provisions of the MCA and has ceased to enforce those sections it considers preempted. Thus, the PSC no longer requires applicants for certificates of authority to present evidence that their proposed service will serve a required public purpose without creating excess service. It no longer mandates that carriers avoid predatory pricing practices or file tariff schedules. Similarly, it no longer exercises its authority under the MCA to determine reasonable and sufficient rates, fares, charges and classifications or to penalize unlawful discrimination. See *In re Federal Preemption*, supra, p 297.

implicate preemption, the state legislation may be permitted to stand unaffected by the national policy of economic deregulation. *Id,* p 390.

While the tenuousness or peripherality of an "indirect relationship" has not been expressly addressed, there are some indications that it need not be particularly remote from the preempted field. For instance, in *American Airlines* v *Wolens,* supra, 130 L Ed 2d at 726 n 5, the United States Supreme Court endorsed the view that "the ban on enacting or enforcing any [state] law 'relating to rates, routes, or services' is most sensibly read, in light of the [federal law's] overarching deregulatory purpose, to mean 'States may not seek to impose their own public policies or theories of competition or regulation on the operation of an air carrier.'" That view was prefigured in *Morales,* supra, p 378, which recognized that the federal law was designed to place "maximum reliance on competitive market forces" under a uniform national regime of economic deregulation, i.e., "[t]o ensure that the States would not undo federal deregulation with regulation of their own." Thus, that federal enactment, as *American Airlines* stated at 728, "stops States from imposing their own substantive standards with respect to rates, routes, or services." That would suggest that the fees challenged here are not preempted by § 601 since they impose on motor carriers no particular "substantive standards" of competition or regulation.

The Commission's determinations regarding the effect of § 601 on the MCA were summarized recently in *In re Federal Preemption,* supra, p 295:

> "The PSC concluded that § 601 preempts only regulatory provisions concerning price, routes, and service – the essence of economic regulation.

> The PSC found it had substantial residual regulatory authority, including regulatory authority over matters such as safety. The PSC further concluded that it should continue a certification process (albeit, a 'streamlined' certification process) for intrastate motor carriers and that it could and should continue to assess statutorily mandated fees. . . . Since issuing its decisions, the PSC has ceased enforcing those provisions of the Motor Carrier Act that it concluded had been preempted."

Thus federal preemption under § 601 and the Commission's decisions applying that federal principle to the MCA have substantially altered the regulatory framework for the trucking industry in Michigan. *Id,* p 298.

Even so, the court in *In re Federal preemption,* p 301, ruled that much of the MCA survives the federal preemption statute:

> "[I]t is clear and unambiguous from the language of § 601 that the congressional intent was not to preempt all state regulation of the trucking industry. Section 601 expressly excepts from its preemptive effect significant aspects of regulation, including safety regulation, regulation of size and weight of vehicles, regulation of insurance requirements, and regulation of the transportation of household goods. If the language of a statute is clear and unambiguous, the plain meaning of the statute reflects the legislative intent. . . . Furthermore, the House Conference Report indicates that 'economic regulation' is intended to be preempted and that states retain their authority to regulate various aspects of the transportation industry. See H R Conf Rep No 677, 103d Cong, 2d Sess, pp 84-85. . . . The

> argument that Congress intended to preempt the entire field of regulation of motor carriers fails in the face of the language of the legislation and its history. The PSC's determination that § 601 was intended to preempt only economic regulation is consistent with the language and history of the legislation."

See also *Michigan Trucking Ass'n* v *Public Service Comm (On Remand)*, 225 Mich App 424, 427-429; 571 NW2d 734 (1997).

Significantly, the *Federal Preemption* court, pp 302-303, also rejected the contention reiterated by Plaintiffs here that federal preemption of all economic regulation means that the fees assessed under the MCA to finance that regulation must likewise be preempted, especially since the primary focus of the MCA had traditionally been economic regulation of the trucking industry:

> "Section 601 did not preempt the entire Motor Carrier Act. Section 601 of the FAAAA does not in its words indicate an intent to preempt fee provisions such as those challenged by these appellants. The legislative history reflects a contrary intent. The House Conference Report states that nothing in the legislation is intended to change the application of state tax laws to motor carriers. H R Conf Rep No 677, supra, p 85.
>
> "The PSC still has significant regulatory obligations. For example, the PSC must supervise and regulate the safety of motor carrier operations. MCL 479.41; MSA 22.587(1). There is still a certification process. It follows that the fees for obtaining a certificate of authority, MCL 478.1; MSA 22.560, for protesting an application for a certificate, MCL 478.1a; MSA 22.560(1), and for

> administering the act, MCL 478.2(1); MSA 22.561(1), are unaffected by the preemptive effect of § 601. In fact, because the PSC is not using its resources to enforce preempted portions of the Motor Carrier Act, the fees collected by the PSC are not related to the preempted provisions and rules. Indeed, appellants . . . have not shown that the cost of the PSC's operations has ever been totally funded by the fees its [sic] collects, and they have not provided any reason to believe that the fees collected were or can be used only for what is now preempted economic regulations."

The Court of Appeals has spoken. In two published decisions, *Federal Preemption* and *Michigan Trucking Ass'n*, supra, it has ruled that § 601 did not preempt the MCA in its entirety, and least of all in matters of safety regulation and the application and vehicle fees challenged here. That must be this Court's judgment as well. In short, Plaintiffs' motion based on the federal preemption claim must be denied.

SINGLE STATE REGISTRATION SYSTEM

Congress has provided for a Single State Registration System (SSRS) that requires a motor carrier having interstate authority to register annually with only one of the states among those it is authorized to provide transportation service. Under 49 USC 11506, the SSRS is deemed to satisfy the registration requirements of all other states, except for a nominal fee "not to exceed $10 per vehicle" that is permitted annually to each participating state. The same section prohibits as an unreasonable burden on interstate commerce any other fee not in accordance with that specifically authorized.

Plaintiffs complain that the MCA violates the SSRS by its art IV, § 2(2) requirement of a $100.00 annual fee per vehicle that is registered in Michigan and operated entirely in interstate commerce by a Michigan-licensed motor carrier. Alternatively, they contend that § 2(2) is effectively preempted by the SSRS mandate that no participating state, other than the registering state, exact more than an annual fee of $10.00 per vehicle operated in interstate commerce. In either case, this MCA vehicle fee is supposedly rendered a nullity by the SSRS.

Of course, Michigan's MCA "applies to entities engaged in interstate commerce only to the extent it is consistent with federal law. MCL 476.12; MSA 22.545." *Federal Preemption,* supra, p 294. Here, however, there is no inconsistency. Section 2(2) of article IV of the MCA applies only to vehicles registered in Michigan by Michigan-licensed motor carriers, i.e., where Michigan is the "registering state." The SSRS fee system places a $10.00 annual vehicle fee limit on only the "participating states," however, not on the "registering state." The SSRS neither prohibits nor preempts the Act's § 2(2) vehicle fee.

Moreover, the MCA expressly accommodates the fee system mandated by the SSRS. In article IV, section 7, MCL 478.7; MSA 22.566, the Act provides for the registration of and fees paid by carriers engaged in interstate transportation pursuant to the SSRS and any other reciprocal multistate agreement. In particular, subsection (4) mandates that "[t]he annual fee levied on each interstate or foreign motor carrier vehicle operated in this state and licensed in another state or province of Canada shall be $10.00." Obviously, that is perfectly consistent with the annual $10.00 vehicle fee permitted each participating

state by the SSRS. Plaintiffs' motion must therefore be denied.

COMMERCE CLAUSE

The dormant Commerce Clause of US Const, art I, § 8, prohibits a state from erecting barriers to the national regime of free trade by enacting tax or fee requirements that constitute an undue burden on or discrimination against interstate commerce. Plaintiffs assert that the MCA art IV, § 2(1) vehicle fee for intrastate Michigan transportation impermissibly discriminates against interstate motor carriers by favoring domestic carriers whose business is exclusively intrastate. This is supposed to be so essentially because domestic intrastate carriers necessarily derive a disproportionately greater financial advantage for their § 2(1) fees than do those interstate carriers that may want to make an occasional intrastate haul while their vehicles are visiting Michigan. The Court is not persuaded that the choice of whether to engage primarily in interstate rather than exclusively in intrastate transportation, made by private businesses competing in the free marketplace, affects Commerce Clause concerns. And it surely cannot result in the invalidation of § 2(1) on Commerce Clause grounds.

Plaintiffs cite *American Trucking Ass'ns* v *Scheiner*, 483 US 266, 282; 107 S Ct 2829; 97 L Ed 2d 226 (1987), for its condemnation of "flat taxes" whose unapportioned measure results in discrimination against some participants in interstate commerce in a manner that contradicts the purpose of the Commerce Clause. As *Goldberg* v *Sweet*, 488 US 252, 266; 109 S Ct 582; 102 L Ed 2d 607 (1989), explained, "In *Scheiner*, we held that Pennsylvania's flat

taxes on the operation of all trucks on Pennsylvania highways imposed a disproportionate burden on interstate trucks, as compared with intrastate trucks, because the interstate trucks traveled fewer miles per year on Pennsylvania highways." Here, the MCA intrastate vehicle fee is alleged to be just such a "flat tax" and therefore impermissible under the principles enunciated in *Scheiner*. Plaintiffs' reliance on *Scheiner* is misplaced.

First, the taxes at issue in that case were exacted for the purpose of financing roadway upkeep based on highway usage, but the flat tax on the privilege of operating on the state roads failed to take into account varying degrees of such usage by the different carriers. Here, however, the fee exacted is regulatory and intended "for administering the act." *Federal Preemption,* supra, p 302. Such state regulation as remains after federal preemption, including regulation of vehicular size and weight, insurance requirements and safety standards, is not amenable to a fee structure based on apportionment by usage rates. And the fee itself is plainly not a tax on the privilege of doing business in Michigan.[5] Thus, Commerce Clause interests are not affected by the intrastate vehicle fee.

Second, the flat taxes in *Scheiner* applied across the board to any vehicle traveling the state's highways,

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[5] It might also be pointed out that there is a distinction between a tax and a fee, although the *Scheiner* Court did not adhere to it. Neither did the Court of Appeals in *Federal Preemption,* supra at 302, quoted above in context, which spoke of the MCA fees as if they were nothing different from "the application of state *tax laws* to motor carriers." (Emphasis added.)

whereas the fee here is exacted only of those vehicles, foreign or domestic, that the carrier chooses to operate in point-to-point intrastate Michigan service. The interest furthered by that fee, viz., ensuring that vehicles and carriers operating on Michigan highways in intrastate service comply with MCA safety and fitness norms, is an exercise of state police power and the legitimate expression of the state's concern that the welfare of its citizens be protected. That interest plainly does not have a prejudicial effect on interstate commerce and thus does not impact the Commerce Clause.

Third, *Scheiner* itself provides ample reason to think its principles are inapplicable to the intrastate vehicle fee of the MCA. There the Court found dispositive its precedents holding "that the Commerce Clause prohibits a State from imposing a heavier tax burden on out-of-state businesses that compete in an interstate market than it imposes on its own residents who also engage in commerce among States." *Id,* p 282 (footnote deleted). Stated more plainly, this principle applies only where foreign and domestic carriers are all competing in interstate commerce. Thus, Michigan cannot, consistent with the Commerce Clause, tax foreign carriers more heavily than domestic carriers engaged in interstate competition. It can, however, impose the identical vehicle fee of $100.00, as authorized by § 2(1), on all carriers that opt to provide intrastate Michigan transportation services. That fee does not implicate Commerce Clause concerns.

In short, the fee burden here does not fall more heavily on foreign carriers than on Michigan carriers engaged in interstate commerce. It is, rather, the same for all carriers that choose to provide intrastate Michigan haulage services either exclusively or in addition to

interstate operations. As was said in *Scheiner,* p 283, "the Commerce Clause is not offended when state boundaries are economically irrelevant." That is surely true of the § 2(1) intrastate vehicle fee based on Michigan boundaries, which have no economic relevance for interstate traffic. The motion challenging that fee on Commerce Clause grounds must therefore be denied.

The Court determines that Plaintiffs' motions for partial summary disposition are meritless. All three motions must therefore be denied. An order consistent with this opinion may enter upon its proper presentation.

/s/ James R. Giddings
JAMES R. GIDDINGS
Circuit Judge

DATED: Oct. 13, 1998

STATE OF MICHIGAN

IN THE COURT OF CLAIMS

WESTLAKE TRANSPORTATION, INC., et al,

Plaintiffs,

v

MICHIGAN PUBLIC SERVICE COMMISSION, et al

Defendants. /

File No. **95-15628 CM**
Hon. James R. Giddings

TROY CAB, INC., et al,

Plaintiffs,

v

STATE OF MICHIGAN, et al

Defendants. /

File No. **94-15631 CM**
Hon. James R. Giddings

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ORDER

At a session of said Court, held in the Court of Claims on: November 12, 1998

PRESENT: _____

For the reasons stated in its October 13, 1998 Opinion, this Court hereby DENIES in their entirety Plaintiffs' First and Second Motions for Partial Summary Disposition filed on June 22, 1995 and June 22, 1995, respectively, and Intervening Plaintiff's Motion for Summary Disposition filed on June 30, 1995.

James R. Giddings
HONORABLE JAMES R. GIDDINGS
COURT OF CLAIMS JUDGE

A TRUE COPY
CLERK OF THE COURT
30TH JUDICIAL CIRCUIT COURT

STATE OF MICHIGAN

IN THE COURT OF CLAIMS

WESTLAKE TRANSPORTATION, INC., et al.,

Plaintiffs,

and

AMERICAN TRUCKING ASSOCIATIONS, INC. and TNT HOLLAND MOTOR EXPRESS, INC.,

Intervening Plaintiffs,

-vs-

MICHIGAN PUBLIC SERVICE COMMISSION, et al.

Defendants. /

DOCKET NO. 95-15628-CM

TROY CAB, INC., et al.,

Plaintiffs,

and

AMERICAN TRUCKING ASSOCIATIONS, INC. and TNT HOLLAND MOTOR EXPRESS, INC.,

Intervening Plaintiffs,

-vs-

STATE OF MICHIGAN, et al.,

Defendants. /

DOCKET NO. 95-15631-CM

ORDER GRANTING DEFENDANTS' MOTION FOR SUMMARY DISPOSITION

At a session of said Court held in the City of Lansing on the 30th day of December, 1998.

PRESENT: HONORABLE JAMES R. GIDDINGS
Circuit Judge

The Court having entered on November 12, 1998 its Order denying Plaintiffs' First and Second Motions for Partial Summary Disposition and Intervening Plaintiffs' Motion for Summary Disposition for the reasons given in the Court's written Opinion of October 13, 1998; Defendants having renewed their Motion for Summary Disposition of all claims in their entirety by filing two supplemental briefs in support; the Court having reviewed the motion and the briefs of the parties in both consolidated actions having heard oral argument on the motion, and being fully advised in the premises;

NOW, THEREFORE, IT IS HEREBY ORDERED AND ADJUDGED that Defendants' Motion for Summary Disposition is GRANTED. Plaintiffs and Intervening Plaintiffs in each case cannot prevail as a matter of law and both actions must therefore be DISMISSED for the reasons stated in Defendants' Second Supplemental Brief in Support of Defendants' Motion for Summary Disposition filed on November 10, 1998, and in the other briefs referred to therein.

IT IS SO ORDERED.

/s/ James R. Giddings
JAMES R. GIDDINGS
Circuit Judge

A TRUE COPY
CLERK OF THE COURT
30TH JUDICIAL CIRCUIT COURT

STATE OF MICHIGAN

IN THE COURT OF CLAIMS

WESTLAKE TRANSPORTATION, INC., et al.,

Plaintiffs,

and

AMERICAN TRUCKING ASSOCIATIONS, INC. and TNT HOLLAND MOTOR EXPRESS, INC.,

Intervening Plaintiffs,

-vs-

MICHIGAN PUBLIC SERVICE COMMISSION, et al.

Defendants. /

DOCKET NO. 95-15628-CM

TROY CAB, INC., et al.,

Plaintiffs,

and

AMERICAN TRUCKING ASSOCIATIONS, INC. and TNT HOLLAND MOTOR EXPRESS, INC.,

Intervening Plaintiffs,

-vs-

STATE OF MICHIGAN, et al.,

Defendants. /

DOCKET NO. 95-15631-CM

ORDER DENYING PLAINTIFFS' MOTION FOR RECONSIDERATION

At a session of said Court held in the City of Lansing on the 7th day of March, 2000.

PRESENT: HONORABLE JAMES R. GIDDINGS
Circuit Judge

The Court having entered on December 30, 1998 an order granting Defendants' renewed Motion for Summary Disposition and dismissing these consolidated complaints challenging the constitutionality of certain fees imposed on the trucking industry by Michigan law as administered by the Public Service Commission; Plaintiffs having filed a Motion for Reconsideration and brief in support; the Court having reviewed the motion and brief, and being fully advised in the premises;

NOW, THEREFORE, IT IS HEREBY ORDERED AND ADJUDGED that Plaintiffs' Motion for Reconsideration is DENIED, because it does not appear that the order of dismissal was erroneously entered. The motion does little more than rehash issues presented and decided earlier. "[A] motion for rehearing or reconsideration which merely presents the same issues ruled on by the court, either expressly or by reasonable implication, will not be granted." MCR 2.119(F) (3). Plaintiffs fail to demonstrate palpable error by which the Court has been misled. *Id.* Thus, there is no need to address each of Plaintiffs' renewed issues. The Court will comment, however, on the salient problems presented in the motion, principally those challenging the constitutionality of certain fees, identified and cited in the Court's written opinion of October 13, 1998, imposed on for-hire motor carriers by the Motor Carrier Act (MCA).

There is a presumption favoring the constitutionality of statutes. *McDougall* v *Schanz,* 461 Mich 15, 24; 597 NW2d 148 (1999); *H J Tucker & Associates, Inc* v *Allied Chucker & Engineering Co.* 234 Mich App 550, 556; 595 NW2d 176 (1999), lv den 461 Mich 944 (2000). Not only are statutes presumed constitutional but Michigan courts also have a duty to construe a statute as constitutional unless its unconstitutionality is clearly apparent. *Mahaffey* v *Attorney General,* 222 Mich App 325, 344; 564 NW2d 104 (1997). A successful challenge to the facial constitutionality of a statute must establish that there exist no circumstances under which the statute would be valid. *Council of Organizations & Others for Education About Parochiaid* v *Governor,* 455 Mich 557, 568 & 602; 566 NW2d 208 (1997), quoting *United States* v *Salerno,* 481 US 739, 745; 107 S Ct 2095; 95 L Ed 2d 697 (1987). Indeed, an interpretation of the Constitution that does not result in a statute being found invalid is preferred to one that does. *House Speaker* v *Governor,* 443 Mich 560, 585; 506 NW2d 190 (1993), quoting *Marbury* v *Madison,* 5 US (1 Cranch) 137, 175; 2 L Ed 60 (1803). Plaintiffs fail to overcome the presumption.

Accordingly, it is the Court's duty to determine whether the MCA is capable of *any* construction that would make it constitutional. *Michigan United Conservation Club* v *Dep't of Treasury,* ___ Mich App ___; ___ NW2d ___ (opinion by Judge Markey, docket 208429, issued December 10, 1999), slip opinion, p 4. Are the fees imposed on for-hire carriers by the MCA at odds with the plain language of the Constitution? The Court has already determined, by the order of December 30, 1998, that they are not. The same conclusion must prevail here.

Plaintiffs assert first that these fees are invalid and the Court must order that they be at least partially refunded because they are actually taxes that have not been properly adopted in accordance with the constitutional requirements. They contend that the fees are disproportionate to the necessary costs of regulating for-hire motor carriers, and that the moneys collected from the fees are largely used as general revenue to finance other aspects of government activity. They also point to *Yellow Freight System, Inc* v *Michigan,* 231 Mich App 194, 208; 585 NW2d 762 (1998), where the Court of Appeals opined that revenue collection "in the form of a fee" imposed by the MCA should be treated like "state tax cases" for purposes of 42 USC 1983 and the rule enunciated in *Nat'l Private Truck Council, Inc* v *Oklahoma Tax Comm,* 515 US 582; 115 S Ct 2351; 132 L Ed 2d 509 (1995). This Court, they suggest, should therefore treat these fees as if they were taxes. The Court disagrees.

There is no bright-line test for distinguishing a tax from a fee. *Bolt* v *City of Lansing,* 459 Mich 152, 160; 587 NW2d 264 (1998); *Graham* v *Kochville Twp,* 236 Mich App 141, 150; 599 NW2d 793 (1999). Whether the charges exacted for these applications and renewals of authority and for truck decals are properly characterized as fees or taxes requires consideration of several factors. *Bolt* at 161. No single factor is determinative of the distinction; rather, all factors should be considered in determining whether together they preponderate in one direction or the other. *Id.* at 163-169. Accord *Graham* at 151, citing *Bolt* at 167, n 16: "[T]hese criteria are not to be considered in isolation, but rather in their totality, such that a weakness in one area would not necessarily mandate a finding that the charge at issue is not a fee."

Generally, a fee is paid for a service rendered or a benefit conferred where there is "some reasonable relationship" between the amount of the fee and the value of the service or benefit, whereas a tax is meant simply to raise revenue. *Bolt* at 161, quoting *Saginaw Co* v *John Sexton Corp of Michigan,* 232 Mich. App 202, 210; 591 NW2d 52 (1998). Exactions imposed primarily for public rather than private purposes are taxes; the revenue raised by taxes inures to the benefit of all, as opposed to fees paid by a few for benefits that inure to the persons or group assessed. *Id.,* citing *Bray* v *Dep't of State,* 418 Mich 149, 162; 341 NW2d 92 (1983), which quoted *Dukesherer Farms, Inc* v *Dep't of Agriculture (After Remand),* 405 Mich 1, 15-16; 273 NW2d 877 (1979).[1]

Three criteria apply to the distinction between a fee and a tax. The first criterion requires that a fee serve a regulatory rather than a revenue-raising purpose. *Bolt, supra,* citing *Merrelli* v *St Clair Shores* 355 Mich 575, 583-584; 96 NW2d 144 (1959), which quoted *Vernor* v *Secretary of State,* 179 Mich 157, 167-170; 146 NW 338 (1914).[2] The

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[1] This "factor" can be confusing if it is mistakenly thought to require that the moneys acquired from fees never be used to benefit the public. On the contrary, regulatory fees such as those at issue here are an exercise of the police power of the community whose purpose is the protection of the public health, safety and welfare. Indeed, "such moneys are incidental to the accomplishment of the primary purpose of guarding the public." *Merrelli* v *St Clair Shores,* 355 Mich 575, 583; 96 NW2d 144 (1959).

[2] Citing the same precedent, *Graham, supra,* recently qualified the first criterion by saying that a fee can have a secondary revenue-raising purpose without having to treat the fee as a tax: "While a fee must serve a primary regulatory purpose, it can also raise money as long as it is in support of the underlying regulatory purpose." That principle applies here.

second criterion requires that a fee be proportionate to the necessary cost of the benefit or service provided. *Id.* at 162, citing *Merrelli, supra,* and *Bray, supra* at 160, and quoting *Vernor, supra* at 167. The third criterion requires that a fee be characterized by some degree of "voluntariness" in that those who pay it be able to refuse or limit their use of the benefit or service. *Id.* at 162-163, citing *Ripperger* v *Grand Rapids,* 338 Mich 682, 686; 62 NW2d 585 (1954), which quoted *Jones* v *Detroit Water Comm'rs*, 34 Mich 273, 275 (1876).[3]

The challenged fees are not unlawful taxes. As was summarized in *Bolt, supra* at 162, quoting *Vernor, supra* at 167:

> "'To be sustained [as a regulatory fee], the act we are here considering must be one for regulation only, and not as a means of producing revenue. Such a measure will be upheld by the courts

[3] But see *Bolt* v *City of Lansing (On Remand),* 238 Mich App 37, 45-48; ___ NW2d ___ (1999), where it appears that confusion over the historic import of these factors persists. This Court agrees with Judge Markman's dissent, pp 67-71, pointing out that the Supreme Court in *Bolt, supra,* relied on long-established precedent in distinguishing fees from taxes and did not create some "new" test of the difference between them. This Court also agrees with the dissent, at 71, when it says, "in virtually all such disputes, the application of a 'totality of factors' test will inevitably entail some uncertainty in terms of the ultimate result, while also affording both sides some measure of reasonable argument." That, however, puts the Markman dissent in close proximity to that in *Bolt* at 176, where Justice Boyle expressed strong doubt, shared by this Court, that the "test" is straightforward and consistent enough to be applied with any degree of precision to this "legal conundrum." But perhaps that should go without saying where the test is admittedly not one of "bright lines" – which is, incidentally, one reason for the *Bolt* decision having split 4:3.

> when plainly intended as a police regulation, and the revenue derived therefrom is not disproportionate to the cost of issuing the license, and the regulation of the business to which it applies.'" (Brackets in original.)

In *Merrelli, supra* at 583-584, quoting *Vernor, supra* at 168, the proportionality of a fee was linked to its presumed reasonability:

> "'[W]hat is a reasonable fee must depend largely upon the sound discretion of the legislature, having reference to all the circumstances and necessities of the case. It will be presumed that the amount of the fee is reasonable, unless the contrary appears upon the face of the law itself, or is established by proper evidence. . . .
>
> "'In determining whether a fee required for a license is excessive or not, the absence or amount of regulatory provisions and the nature of the subject of regulation should be considered, and, if the amount is wholly out of proportion to the expense involved, it will be declared a tax. * * * '" (Cites deleted.)

As *Vernor* also said at 168, in important language not quoted in *Merrelli,* "If revenue is incidentally derived which is not so disproportionate as to make the fee charged unreasonable, there can be no objection." Accord *Graham, supra* (see footnote 2). That is the case here.

The Court determines that the MCA fees are not "wholly out of proportion to the expense involved" in the Commission's regulation of the motor carrier industry. The revenue incidentally derived therefrom, even if in excess of the necessary costs of regulation, is not so disproportionate as to render these fees unreasonable – especially since

they are supportive of the underlying regulatory purpose. *Graham, supra.* Payment of the fees is not compulsory inasmuch as carriers choose just how much of a presence in Michigan, if any, they want their trucks to have. Consistent with the criteria set out in *Bolt, supra* at 161-162, these fees serve a regulatory purpose, are proportionate to the necessary costs of the regulatory service and are voluntary. Compare *Graham, supra* at 152-156. The Court must therefore defer to the sound discretion of the legislature in deciding what MCA fees would be reasonable. In short, these fees are not taxes and Plaintiffs are therefore not entitled to a refund.

Second, Plaintiffs assert that the challenged fees are facially infirm for their disparate treatment of for-hire motor carriers relative to all other motor carriers that regularly travel Michigan highways. On this view, since the latter group is not subject to the imposition of MCA fees there can be no rational basis for such dissimilar treatment of motor carriers. Saying that "[t]he classification made by the [MCA] is arbitrary and discriminates against for-hire motor carriers," Plaintiffs complain that the MCA denies them equal protection of the law by requiring that only they, and not private or exempt carriers, pay for police enforcement of safety provisions applicable to the entire trucking industry. Indeed, "There is no difference between for-hire motor carriers, on the one hand, and private and exempt carriers, on the other hand, in terms of the safety concerns that they pose to the traveling public . . . [or] of the amount of police enforcement required to see that they are complying with the law . . . [or] of the amount of damage caused by such carriers to the state and federal highways." Pointing out that the for-hire carriers "have exactly the same interest as private

carriers in operating their equipment in a safe fashion," Plaintiffs conclude that imposition of these fees on only the former must be "irrational," "arbitrary" and "discriminatory," and therefore must offend equal protection of the law principles.

This view fails to see, however, that the process of drawing lines and distinguishing between kinds of motor carriers for regulatory purposes is a legislative task of identifying priorities, weighing relevant considerations and choosing among competing alternatives. Equal protection guarantees do not require that such distinctions be ideal: "'[T]he drawing of lines that create distinctions is peculiarly a legislative task and an unavoidable one. Perfection in making the necessary classifications is neither possible nor necessary.'" *O'Donnell* v *Farm Mutual Automobile Ins Co,* 404 Mich 524, 542; 273 NW2d 829 (1979), app dis 444 US 803 (1980), quoting *Massachusetts Bd of Retirement* v *Murgia,* 427 US 307, 314; 96 S Ct 2562; 49 L Ed 2d 520 (1976), and *Ohio Bureau of Employment Services* v *Hodory,* 431 US 471, 489; 97 S Ct 1898; 52 L Ed 2d 513 (1977).

Nor does equal protection require the legislature to deal with every aspect of the problems presented in motor-carrier regulation at the same time. A statute is not unconstitutional merely because it might have gone further than it did by solving all such problems at once. The legislature need not simultaneously "strike at all evils" associated with such regulatory problems; rather, the measure adopted "'may take one step at a time, addressing itself to the phase of the problem which seems most acute to the legislative mind.'" *Id.* at 543, quoting *Katzenbach* v *Morgan,* 384 US 641, 657; 86 S Ct 1717; 16

L Ed 2d 828 (1966), and *New Orleans* v *Dukes,* 427 US 297, 305; 96 S Ct 2513; 49 L Ed 2d 511 (1976). All that need be shown is that there was a rational basis for the particular lines that were drawn. If so, the legislative judgment must then be sustained. *Id.* "The mere fact that the Legislature has chosen to draw a distinction; between for-hire and private motor carriers for purposes of this kind of regulation "does not mean that [the MCA] is unconstitutional." *Id.* at 547. See also *In re Forfeiture of $109,901,* 210 Mich App 191, 197; 533 NW2d 328 (1995).

Plaintiffs are not members of a protected class and fundamental rights are not implicated in these consolidated actions. This equal protection claim must therefore be assessed by means of a rational basis test. *Saginaw Co, supra* at 222-223, citing *Yaldo* v *North Pointe Ins Co,* 457 Mich 341, 349; 578 NW2d 274 (1998). Michigan courts must uphold the challenged statute where it furthers a legitimate governmental interest and the classification is rationally related to achieving that interest. *Id.* at 223. This requires only that the legislation's distinctions bear a reasonable relationship to a permissible legislative objective. *Pioneer State Mutual Ins Co* v *Allstate Ins Co.* 417 Mich 590, 599-600; 339 NW2d 470 (1983). There need only be some reason for thinking that the means chosen, i.e., the statute's distinctions, are likely to further the legislature's goals. *Doe* v *Dep't of Social Services,* 439 Mich 650, 662; 487 NW2d 116 (1992), citing *Shavers* v *Attorney General,* 402 Mich 554, 613; 267 NW2d 72 (1978), cert den 442 US 934 (1978).

The application and renewal fee and the intrastate and interstate decal fees required by the MCA reflect the legislature's intent to regulate the non-preempted aspects

of the for-hire motor carrier industry remaining after federal preemption of the economic aspects. It surely was not unreasonable for legislators to think that industry in a materially different position relative to the public interest than private carriers. That distinction rationally comports with the legislative intent to subject the former to regulation for the sake of guarding the public. Whether that means to securing the public interest actually works out as intended is another question that is of no concern to equal protection analysis. *O'Donnell, supra* at 549.

Further, the legislature's statutory distinction between commercial and private motor carriers for the purpose of exacting these fees is a valid classification designed to address the specific concerns of this legislation. The objective is without doubt a legitimate state interest, and there is nothing unreasonable or irrational about the classification scheme's relationship to that goal. The fees are not arbitrary since they represent a reasonable effort by government to assure that the public is adequately protected against potential dangers posed by for-hire carriers. Although the lines drawn by the legislature in making the MCA applicable only to commercial carriers may be imperfect, that is not sufficient to render them unconstitutional. "'That the legislative solution appears undesirable, unfair, unjust or inhumane does not of itself empower a court to override the legislature and substitute its own solution.'" *Doe, supra* at 681, quoting *Manistee Bank & Trust Co* v *McGowan,* 394 Mich 655,

666-667; 232 NW2d 636 (1975). In short, the challenged fees do not violate equal protection of the law.[4]

The Court will address next one facet of the federal preemption issue[5] that inadvertently went untreated in the written opinion of October 13, 1998. There, at 11, this Court ruled that the Single State Registration System (SSRS), 49 USC 11506, now 49 USC 14504, neither preempted nor prohibited the § 2(2) per-vehicle interstate decal fee of $100 imposed by the MCA. The Court reaffirms that ruling and now considers Plaintiffs' contention that, even if that is correct (which they dispute), the same fee had been preempted or prohibited long before Congress adopted the SSRS in 1991 and the Interstate Commerce Commission (ICC) implemented it in 1994. Specifically, they argue that certain pre-SSRS regulations of the ICC had imposed an absolute limit, "not to exceed" $5 at one time and $10 later, on all interstate decal fees, including those required by the state that registers and licenses a motor carrier's vehicles. This Court disagrees.

Neither before implementation of the SSRS nor after did the Congress or the ICC impose a ceiling on the fee that a registration state may charge for per-vehicle interstate decals. The fee limits that were imposed applied only to states where the vehicles were not based and registered.

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[4] Given the Court's disposition of the first two issues, there is no need to treat Plaintiffs' third issue based on 42 USC 1983. That is so because § 1983 is merely a vehicle for the vindication of viable claims, and here no such claim remains.

[5] For a summary of preemption principles, see *Walker* v *Johnson & Johnson Vision Products, Inc,* 217 Mich App 705, 710-713; 552 NW2d 679 (1996).

The case vaunted by Plaintiffs as providing "an excellent educational discussion of federal law both prior to and after implementation of the SSRS," *Nat'l Ass'n of Regulatory Utility Comm'rs* v *Interstate Commerce Comm.*, 309 US App DC 325; 41 F3d 721, 724 (1994), says nothing different.[6] Indeed, it does not even touch on the issue but does stress that it was the congressional intent in establishing the SSRS not only "'to benefit the interstate carriers by eliminating unnecessary compliance burdens'" but also "'to preserve revenues for the states [like Michigan] which had participated in the bingo [card/stamp] program'" of interstate reciprocity under regulation by the ICC. *Id.*, quoting H R Conf Rep No 102-404, 102d Cong, 1st Sess, 437 (1991).

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[6] As to the SSRS, the same case points out at 725 that Congress distinguished the registration state from the participating states:

> "The 'registration state' may require applicants to submit evidence that they have been certified by the ICC, that they are properly insured, and that they have a local agent available for service of process .... The registration state also collects and distributes per-vehicle fees for those other states participating in the 'single-state' system through which the carrier seeks to run its vehicles.... Participation is limited under the statute to the 39 states that had earlier elected to join the 'bingo stamp' program.... Each of these states may charge carriers an amount 'equal to the fee, not to exceed $10 per vehicle, that such State collected or charged as of November 15, 1991,' ...: and the registration state must 'issue a receipt ... reflecting that the carrier has filed proof of insurance ... and has paid fee amounts in accordance with the fee system established,' ... " (Cites deleted.)

The *Nat'l Ass'n* court scrupulously followed this distinction throughout its opinion. This Court has done the same here.

In particular, the ICC regulation at issue, 49 CFR 1023.33, remained substantially unchanged from 1982 through 1992 when the agency began its rulemaking implementation of the SSRS. Throughout that period it is clear that the regulation and its fee limitation applied only to those states requiring "identification stamps" or an identification number for each vehicle not registered or licensed by such states. It did not apply to the state of registration. The § 2(2) per-vehicle interstate decal fee of the MCA is imposed only where Michigan is the state of registration and licensing. It was therefore not preempted or proscribed by federal law either before or after implementation of the SSRS. In short, Plaintiffs are not due any refund.

Finally, Plaintiffs assert that the Court must grant reconsideration in light of *Yellow Freight, supra*, which they say "is dispositive as to certain critical issues in the instant case." It appears, however, that the only issues presented here that *Yellow Freight* disposed of dealt with remedies, whereas Plaintiffs have no remedy in this matter because they cannot prevail on the merits. *Yellow Freight* held that the state had collected SSRS fees pursuant to § 7(4) of the MCA in excess of the amount allowed by the SSRS and that the excess amount had to be refunded. But none of the Plaintiffs in this action, including those named in the Troy Cab complaint, challenges fee collection under § 7(4) on that specific ground. They allege, rather, that such $10 fee assessed against carriers registered and licensed not by Michigan but by the other participating states is somehow "inconsistent" with the

SSRS requirements – but without spelling out the precise inconsistency implicated in *Yellow Freight*.[7] It follows that *Yellow Freight* does not govern here. Plaintiffs do not challenge § 7(4) based on any inconsistency with the SSRS stemming from the changed method, implemented by the PSC in 1992, for determining reciprocity among the states.

The Court determines that its order of December 30, 1998 was not erroneously entered. The challenged MCA fees are not unlawful taxes and do not violate equal protection guarantees. Plaintiffs therefore have no remedy, either in the form of refunds or as equitable relief pursuant to § 1983, because as previously ruled they

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[7] The inconsistency identified in *Yellow Freight*, p 198, has not been put in contention here:

> "For the 1991 and 1992 registration years, the state collected fees by requiring interstate carriers to buy cab card stamps, also known as 'bingo stamps,' for each of the carrier's vehicles operating within the state. Each stamp cost $10. Pursuant to MCL 478.7(4); MSA 22.565(1) (4), the state had reciprocity agreements with certain other states so that each would waive the fees for vehicles from the other. The dispute arises in part because *the state changed the method it used for determining reciprocity*. For 1991, the state used the 'base-plating system,' which means that reciprocity was determined by the state of the vehicle's registration. In early 1991, the Public Service Commission (PSC) decided that it would quit using the base-plating system. Instead, for the 1992 registration year, fees and reciprocity were determined by the carrier's principal place of business." (Emphasis added.)

As a result of this change of method, the plaintiff paid Michigan about $37,800 more under the new system than it had under the old, a "substantial increase in fees" that clearly violated the SSRS. *Id.* at 198-199.

cannot prevail on the merits. The Plaintiffs' Motion for Reconsideration must therefore be denied.

IT IS FURTHER ORDERED AND ADJUDGED that the Court's written opinion of October 13, 1998, which is incorporated herein by reference, is CONFIRMED. The challenged MCA fees were not preempted by federal legislation and regulations. In particular, the § 2(2) per-vehicle interstate decal fee of $100 was not preempted or prohibited by federal law either before or after implementation of the SSRS where the vehicle's "registration state" is Michigan and where the vehicle is operated entirely in interstate commerce by a Michigan-licensed commercial motor carrier. By the same token, the § 2(1) per-vehicle intrastate decal fee of $100 did not violate the dormant Commerce Clause since it could not impermissibly discriminate against interstate motor carriers where the fee is based purely on Michigan boundaries having no economic relevance for interstate traffic. The challenged fees are constitutional and need not be refunded.

IT IS FURTHER ORDERED AND ADJUDGED that this is the final order of the Court and these consolidated cases are hereby DISMISSED.

IT IS SO ORDERED.

/s/ James R. Giddings
JAMES R. GIDDINGS
Circuit Judge

APPENDIX C

Order **Michigan Supreme Court**
Lansing, Michigan

Entered: December 3, 2003

Maura D. Corrigan,
Chief Justice

123562-5

Michael F. Cavanagh
Elizabeth A. Weaver
Marilyn Kelly
Clifford W. Taylor
Robert P. Young, Jr.
Stephen J. Markman,
Justices

WESTLAKE TRANSPORTATION, INC., VANDERKOOI CARRIERS, INC., EL TORO MOTOR FREIGHT, INC., MYRIAH, INC., PRISM, INC., GERRIGS TRUCKING & LEASING INC., and BEST WAY EXPRESS, INC.,
Plaintiffs-Appellants,

and

SC: 123562-3
COA: 226052, 226122
Court of Claims:
95-015628-CM

AMERICAN TRUCKING ASSOCIATION, INC., and TNT HOLLAND MOTOR EXPRESS, INC.,
Intervening Plaintiffs-Appellees,

v

MICHIGAN PUBLIC SERVICE COMMISSION, DEPARTMENT OF TREASURY, and the STATE OF MICHIGAN,
Defendants-Appellees.

/

TROY CAB, INC., DEECO SERVICES, INC., d/b/a DEECO TRANSPORTATION, TIBERIO FRANK, d/b/a FAIRFIELD TOWING, ELEX, INC., d/b/a LAFOND EXPRESS, DALE CONSTINE & SONS, INC., CALCUT SALES & SERVICES, INC., d/b/a CALCUT TRUCKING COMPANY, AMBASSADOR TRANSPORTATION, INC., HAWKINS STEEL CARTAGE, INC., MIDCON FREIGHT SYSTEMS, INC., JLH TRANSFER, INC., H & H ENTERPRISES, d/b/a S & M CARTAGE, INC., CENTRAL TRANSPORT, INC., BANCROFT TRUCKING COMPANY, US TRUCK COMPANY, INC., WEST END CARTAGE, INC., CENTRAL CARTAGE COMPANY, CTX, INC., MOHAWK MOTOR MICHIGAN, INC., ECONOMY TRANSPORT, INC., MCKINLAY TRANSPORT LIMITED, MASON & DIXON LINES, INC., UNIVERSAL AMCAN LIMITED, ROMEO EXPEDITERS, INC., TOM THUMB SERVICES, INC., d/b/a REI, OJ TRANSPORT COMPANY, JLAW ENTERPRISES, INC., and OJ TRANSPORT, INC.,
Plaintiffs-Appellants,

and

AMERICAN TRUCKING ASSOCIATION, INC., and TNT HOLLAND MOTOR EXPRESS, INC.,
Intervening Plaintiffs-Appellees,

v

MICHIGAN PUBLIC SERVICE COMMISSION, DEPARTMENT OF TREASURY, DEPARTMENT OF COMMERCE, and the STATE OF MICHIGAN,
Defendants-Appellees.

SC: 123564-5
COA: 226053, 226137
Court of Claims: 95-015631-CM

_____/

On order of the Court, the application for leave to appeal the March 11, 2003 judgment of the Court of Appeals is considered, and it is DENIED, because we are not persuaded that the questions presented should be reviewed by this Court.

(LOGO) I, CORBIN R. DAVIS, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the Court.

December 3, 2003 /s/ Corbin R. Davis

APPENDIX D

49 U.S.C. §11506 (1988 ed.)

UNITED STATES CODE ANNOTATED
TITLE 49. TRANSPORTATION
[PARTIAL REVISION]
SUBTITLE IV – INTERSTATE COMMERCE
CHAPTER 115 – FEDERAL-STATE RELATIONS

§ 11506. Registration of motor carriers by a State

(a) In this section, "standards" and "amendments to standards" mean the specification of forms and procedures required by regulations of the Interstate Commerce Commission to prove the lawfulness of transportation by motor carrier referred to in section 10521(a)(1) and (2) of this title by –

(1) filing and maintaining certificates and permits issued to the motor carrier by the Commission;

(2) registering motor vehicles operating under the certificates and permits;

(3) filing and maintaining proof of required insurance coverage or qualification as a self-insurer; and

(4) filing the name of a local agent for service of process.

(b) The requirement of a State that a motor carrier, providing transportation subject to the jurisdiction of the Commission under subchapter II of chapter 105 of this title and providing transportation in that State, register the certificate or permit issued to the carrier under section 10922 or 10923 of this title is not an unreasonable burden on transportation referred to in section 10521(a)(1) and (2) of this title when the registration is completed under

standards of the Commission under subsection (c) of this section. When a State registration requirement imposes obligations in excess of the standards, the part in excess is an unreasonable burden.

(c)(1) The Commission shall maintain standards and amendments to standards (A) prepared and certified to it by the national organization of the State Commissions, and (B) prescribed by the Commission. If the national organization determines to withdraw entirely standards prescribed by the Commission, the Commission shall prescribe new standards by the end of the first year after the national organization determines to withdraw the standards.

(2) An amendment to the standards prepared and certified by the national organization and prescribed by the Commission is effective when the amendment is prescribed or at another time as determined by the national organization.

(d) The national organization shall consult with the Commission and representatives of motor carriers subject to the State registration requirement when preparing amendments to the standards. Different amendments may be prescribed for each class of motor carriers as warranted by the differences in the operations of each class.

(e) This section does not –

(1) authorize standards in conflict with regulations of the Commission; or

(2) affect the authority of the Commission to interpret its regulations and certificates and permits issued under section 10922 or 10923 of this title.

49 U.S.C. §11506 (1994 ed.)

UNITED STATES CODE ANNOTATED
TITLE 49. TRANSPORTATION
SUBTITLE IV – INTERSTATE COMMERCE
CHAPTER 115 – FEDERAL-STATE RELATIONS

§ 11506. Registration of motor carriers by a State

(a) Definitions. – In this section, the terms "standards" and "amendments to standards" mean the specification of forms and procedures required by regulations of the Interstate Commerce Commission to prove the lawfulness of transportation by motor carrier referred to in section 10521(a)(1) and (2) of this title.

(b) General rule. – The requirement of a State that a motor carrier, providing transportation subject to the jurisdiction of the Commission under subchapter II of chapter 105 of this title and providing transportation in that State, register the certificate or permit issued to the carrier under section 10922 or 10923 of this title is not an unreasonable burden on transportation referred to in section 10521(a)(1) and (2) of this title when the registration is completed under standards of the Commission under subsection (c) of this section. When a State registration requirement imposes obligations in excess of the standards, the part in excess is an unreasonable burden.

(c) Single State registration system. –

(1) In general. – Not later than 18 months after the date of the enactment of the Intermodal Surface Transportation Efficiency Act of 1991, the Commission shall prescribe amendments to the standards existing as of such date of enactment. Such amendments shall implement a system under which –

(A) a motor carrier is required to register annually with only one State;

(B) the State of registration shall fully comply with standards prescribed under this section; and

(C) such single State registration shall be deemed to satisfy the registration requirements of all other States.

(2) Specific requirements. –

(A) Evidence of certificate; proof of insurance; payment of fees. – Under the amended standards implementing the single State registration system described in paragraph (1) of this subsection, only a State acting in its capacity as registration State under such single State system may require a motor carrier holding a certificate or permit issued under this subtitle –

(i) to file and maintain evidence of such certificate or permit;

(ii) to file satisfactory proof of required insurance or qualification as a self-insurer;

(iii) to pay directly to such State fee amounts in accordance with the fee system established under subparagraph (B)(iv) of this paragraph, subject to allocation of fee revenues among all States in which the carrier operates and which participate in the single State registration system; and

(iv) to file the name of a local agent for service of process.

(B) Receipts; fee system. – Such amended standards –

(i) shall require that the registration State issue a receipt, in a form prescribed under the amended standards, reflecting that the carrier has filed proof of insurance as provided under subparagraph (A)(ii) of this paragraph and has paid fee amounts in accordance with the fee system established under clause (iv) of this subparagraph;

(ii) shall require that copies of the receipt issued under clause (i) of this subparagraph be kept in each of the carrier's commercial motor vehicles;

(iii) shall not require decals, stamps, cab cards, or any other means of registering or identifying specific vehicles operated by the carrier;

(iv) shall establish a fee system for the filing of proof of insurance as provided under subparagraph (A)(ii) of this paragraph that (I) will be based on the number of commercial motor vehicles the carrier operates in a State and on the number of States in which the carrier operates, (II) will minimize the costs of complying with the registration system, and (III) will result in a fee for each participating State that is equal to the fee, not to exceed $10 per vehicle, that such State collected or charged as of November 15, 1991; and

(v) shall not authorize the charging or collection of any fee for filing and maintaining a certificate or permit under subparagraph (A)(i) of this paragraph.

(C) Prohibited fees. – The charging or collection of any fee under this section that is not in accordance with the fee system established under subparagraph (B)(iv) of this paragraph shall be deemed to be a burden on interstate commerce.

(D) Limitation on participation by States. – Only a State which, as of January 1, 1991, charged or collected a fee for a vehicle identification stamp or number under part 1023 of title 49, Code of Federal Regulations, shall be eligible to participate as a registration State under this subsection or to receive any fee revenue under this subsection.

(3) Effective date of amendments. – Amendments prescribed under this subsection shall take effect by January 1, 1994.

(d) Interpretation authority of Commission. – This section does not affect the authority of the Commission to interpret its regulations and certificates and permits issued under section 10922 or 10923 of this title.

49 U.S.C. §14504 (2000 ed.)

UNITED STATES CODE ANNOTATED
TITLE 49. TRANSPORTATION
SUBTITLE IV – INTERSTATE TRANSPORTATION
PART B – MOTOR CARRIERS, WATER CARRIERS, BROKERS, AND FREIGHT FORWARDERS
CHAPTER 145 – FEDERAL-STATE RELATIONS

§ 14504. Registration of motor carriers by a State

(a) Definitions. – In this section, the terms "standards" and "amendments to standards" mean the specification of forms and procedures required by regulations of the Secretary to prove the lawfulness of transportation by motor carrier referred to in section 13501.

(b) General rule. – The requirement of a State that a motor carrier, providing transportation subject to jurisdiction under subchapter I of chapter 135 and providing transportation in that State, must register with the State is not an unreasonable burden on transportation referred to in section 13501 when the State registration is completed under standards of the Secretary under subsection (c). When a State registration requirement imposes obligations in excess of the standards of the Secretary, the part in excess is an unreasonable burden.

(c) Single State registration system. –

(1) In general. – The Secretary shall maintain standards for implementing a system under which –

(A) a motor carrier is required to register annually with only one State by providing evidence of its Federal registration under chapter 139;

(B) the State of registration shall fully comply with standards prescribed under this section; and

(C) such single State registration shall be deemed to satisfy the registration requirements of all other States.

(2) Specific requirements. –

(A) Evidence of Federal registration; proof of insurance; payment of fees. – Under the standards of the Secretary implementing the single State registration system described in paragraph (1) of this subsection, only a State acting in its capacity as registration State under such single State system may require a motor carrier registered by the Secretary under this part –

(i) to file and maintain evidence of such Federal registration;

(ii) to file satisfactory proof of required insurance or qualification as a self-insurer;

(iii) to pay directly to such State fee amounts in accordance with the fee system established under subparagraph (B)(iv) of this paragraph, subject to allocation of fee revenues among all States in which the carrier operates and which participate in the single State registration system; and

(iv) to file the name of a local agent for service of process.

(B) Receipts; fee system. – The standards of the Secretary –

(i) shall require that the registration State issue a receipt, in a form prescribed under the standards, reflecting that the carrier has filed proof of insurance as provided under subparagraph (A)(ii) of this paragraph and has paid fee amounts in accordance with the fee system established under clause (iv) of this subparagraph;

(ii) shall require that copies of the receipt issued under clause (i) of this subparagraph be kept in each of the carrier's commercial motor vehicles;

(iii) shall not require decals, stamps, cab cards, or any other means of registering or identifying specific vehicles operated by the carrier;

(iv) shall establish a fee system for the filing of proof of insurance as provided under subparagraph (A)(ii) of this paragraph that –

(I) is based on the number of commercial motor vehicles the carrier operates in a State and on the number of States in which the carrier operates;

(II) minimizes the costs of complying with the registration system; and

(III) results in a fee for each participating State that is equal to the fee, not to exceed $10 per vehicle, that such State collected or charged as of November 15, 1991; and

(v) shall not authorize the charging or collection of any fee for filing and maintaining evidence of Federal registration under subparagraph (A)(i) of this paragraph.

(C) Prohibited fees. – The charging or collection of any fee under this section that is not in accordance with the fee system established under subparagraph (B)(iv) of this paragraph shall be deemed to be a burden on interstate commerce.

(D) Limitation on participation by States. – Only a State which, as of January 1, 1991, charged or collected a fee for a vehicle identification stamp or number under part 1023 of title 49, Code of Federal Regulations, shall be eligible to participate as a registration State under this subsection or to receive any fee revenue under this subsection.

Mich. Comp. Laws Ann. §478.2 (West 2002)

MICHIGAN COMPILED LAWS ANNOTATED
CHAPTERS 475 TO 479. MOTOR CARRIER ACT
THE MOTOR CARRIER ACT
ARTICLE IV. FEES

478.2. Annual administration fee; replacement identification fee; temporary permit fee; operation without payment of fees; extensions; payment of fees at single designated location

Sec. 2. (1) In addition to the license fees or taxes otherwise imposed upon motor carriers, there shall be assessed against and collected from each motor carrier for the administration of this act, an annual fee of $100.00 for each self-propelled motor vehicle operated by or on behalf of the motor carrier, except as otherwise provided in this subsection. A motor carrier shall pay a fee of only $50.00 for each self-propelled motor vehicle operated by or on behalf of the motor carrier, if the motor carrier begins operation of the vehicle after June 30 and has not previously paid a fee under this subsection for that vehicle. After payment of the $100.00 annual fee for a motor vehicle, or the $50.00 fee paid for a vehicle operated after June 30, or the $50.00 fee paid for a vehicle used for the transportation of household goods if a motor carrier seeks to begin operating a self-propelled motor vehicle in place of another motor vehicle not leased to the motor carrier by an owner operator for which a fee was paid and surrenders the identification allocated to the motor vehicle by the commission, accompanied by a fee of $10.00, a replacement identification shall be issued. If the owner operator replaces a vehicle while it is still leased to the same motor carrier to whom it was leased when the identification was issued, the replacement identification fee shall be $10.00. For all other replacement vehicles, the fee shall be $25.00

for each complete or partial calendar year quarter remaining in the year as of the date the replacement vehicle is to begin operating upon surrender of the identification allocated to the motor carrier by the commission. For each truck or tractor used exclusively for the transportation of household goods as defined by the commission, the annual fee shall be $50.00.

(2) A motor carrier licensed in this state shall pay an annual fee of $100.00 for each vehicle operated by the motor carrier which is registered in this state and operating entirely in interstate commerce. A motor carrier shall pay a fee of only $50.00 for each self-propelled motor vehicle operated by or on behalf of the motor carrier if the motor carrier begins operation of the vehicle after June 30 and has not previously paid a fee under this subsection for that vehicle.

(3) The commission may issue a temporary 72-hour permit for the operation of a vehicle subject to rules and conditions of the commission at a fee of $10.00, which is in place of any other fee otherwise required under this section. The commission shall reserve the authority to deny or curtail the use of temporary permits authorized by this section.

(4) A motor carrier shall not operate any motor vehicle upon or over the highways of this state, except as otherwise provided in this act, while any of the fees imposed by this act remain unpaid. The commission is prohibited from extending the time of payment or permitting the operation while the delinquency continues.

(5) Motor carriers subject to this act shall not be required to pay the fee on operations of vehicles within the area described in section 2(1)(a) of article V.

(6) The commission shall cooperate with other state departments involved with the registration of commercial motor vehicles to implement a system whereby owners or drivers of commercial motor vehicles can obtain registration plates, decals, or tabs and pay the required fees at a single designated location, rather than at multiple locations.